Cox for Compl'ts
Dav[illegible] for Def'ts.

Decr. affd. [illegible]
April 1, 73.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~432~~. [illegible] 51

THE BOARD OF PUBLIC WORKS OF VIRGINIA, APPELLANT,

VS.

THE COLUMBIA COLLEGE, S. EDWARD GULICK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 28, 1871.

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2 In the supreme court of the District of Columbia.

THE BOARD OF PUBLIC WORKS OF VIRGINIA
vs.
ZEPH. ENGLISH, THE COLUMBIAN COLLEGE, et al.
} 1010. Equity docket, 8.

Original bill.—Filed July 24, 1867.

To the hon. judges of the supreme court of the District of Columbia, sitting in equity:

Humbly complaining, shew unto your honors, your orators, the Board of Public Works of Virginia, a body politic and corporate under the laws of the State of Virginia, that, in the year 1852 and theretofore, certain William Selden, John Withers, Robert W. Latham, and Lawrence P. Bayne were engaged, as partners, in the business of banking
in the city of Washington; that, in June, 1852, W'm Selden
3 retired from said partnership, and George W. C. Whiting took
his place, the firm still retaining the name of Selden, Withers & Co., as theretofore.

They further shew that, in July, 1853, your orators contracted with said firm of Selden, Withers & Co. to receive and sell for account of your orators certain bonds of the State of Virginia, issued for certain public improvements, in pursuance of which arrangement said firm received from your orators, at different times, bonds to the amount of $4,057,000 of coupon bonds and £75,000 of sterling bonds of said State.

They further shew that, in the month of November, 1854, said firm suspended payment, being in insolvent circumstances, and, on the 29th of that month, Messrs. Withers, Latham, L. P. Bayne, and Whiting made a conveyance and assignment to John A. English and William Bayne, of all their partnership assetts, in trust to make distribution among their creditors in a certain order set forth.

4 They shew that, at this time, said firm were largely indebted
to your orators by reason of their failure to account to them for the bonds or their proceeds, theretofore entrusted to them for sale; that said deed of assignment expressly recognized said indebtedness, and directed said trustees, in a certain contingency, to deliver certain bonds to your orators as collateral security therefor.

They further shew that, in January, 1856, the United States filed a bill in equity, in the late circuit court of this district, against the said partners and the trustees under said assignment, claiming to be creditors of the firm, alleging their insolvency and seeking a preference for their own debt out of the social assetts in the hands of said trustees, to which bill other creditors were invited to become parties.

Your orators shew that they appeared by counsel in said cause, and the indebtedness of said firm to them was ascertained by the auditor's
report, and established by the decree of said court to be at least
5 the sum of four hundred and thirty-six thousand eight hundred
and seventy-four $\frac{17}{100}$ dollars, ($436,874.17,) and by several successive decrees said trustees were directed to pay to your orators the sums accumulating in their hands, from time to time, from collections, amounting altogether to some $55.000.

They further shew that said John Withers, professing a desire to satisfy his indebtedness to them, as far as able, out of his private estate in aid of the partnership assetts, if insufficient, conveyed certain prop-

erty in Virginia to W. B. Bocock, then attorney general of that State,
and Andrew Wylie, in trust for that purpose, which, however. is wholly
inadequate; that, in Sept., 1858, it being then evident that the partner-
ship assetts were wholly insufficient to meet said indebtedness, your
orators filed a bill in equity in the circuit court of Alexandria County,
in the State of Virginia, against said Selden, Withers, Bayne, La-
tham, and Whitney, said assignees English and Bayne, and said
6 trustees Bocock and Wylie, praying a decree against said part-
ners and the application of said Virginia property to the payment
of said debt, and such proceedings were had thereupon that, on the first
of June, 1860, a decree was rendered by said court against said Jno.
Withers and his partners for the payment to your orators of the sum of
$513,615.29, with interest on $382,298.15 from April 1, 1860—a trans-
cript of the record and proceedings in said cause is herewith filed as
part of this bill of complaint, marked Compl'ts' Ex't 1, and your orators
shew that said debt remains wholly unsatisfied at this time.

And your orators further shew that, in the year 1860, the said John
Withers moved from Alexandria to the District of Columbia, and died
in Nov'r, 1861, after having previously made his will in 1859, which will
was only capable of passing personal estate, according to the laws
of the District of Columbia; that by said will he appointed James
English, Zeph. English, and Rob't B. McCormick, his executors;
7 that his said will was admitted to probate in the orphans' court of
this District, and said Zeph. English qualified alone, as executor,
in April, 1863, and possessed himself of the personal estate, consisting
of stocks chiefly, amounting at par to $740,053.20, and at the appraised
value to $77,110, besides a balance of cash of $62,333.03, and a large
amount of evidence of debt, of more or less value. They shew that, by
said will, said Withers left several small legacies, and then divided his
estate into five parts, of which he left one to the children of his deceased
brother, Augustine; one to the children of his deceased sister, Betsey
Lucas; one to the children of his deceased sister, Sally English, viz:
James English, Ann Maria Adams, and Zeph. English; one to his
brother, James Withers; and one to Geo. W. Samson, president of the
Columbia College, D. C., for the use of said college.

And your orators shew that, on the 16th of October, 1865, a bill was
filed in your hon. court, in behalf of the Columbia College, and
8 certain persons claiming to be legatees, described in general terms
in said will against the said Zeph. English, as executor of said
Withers, claiming an account and distribution of the personal estate in
his hands; that, upon a reference to the auditor, the parties entitled to
such distribution were ascertained by him upon such information as
was produced to him to be John Henderson and Atta Gulick, special
legatees; the Columbian College, Ann M. Adams, Jas. W. English,
Zeph. English, Jno. A. English, and Cave W. English, representing the
deceased sister, Sally English; Elizabeth Maddan, representing the
deceased brother, Augustine; Peter Lucas, Sally W. Gray, and Mary
Berry, representing the deceased sister, Betsy Lucas; Margaret Kennedy,
Robert Kendrick, Jennete Moseby, J. B. Withers, A. Gulick, Mary C.
Rankin, Letitia Garrard, Robert Withers, Mary Withers, and Nannie
Withers, claiming, as next of kin to the testator, part of the legacy to
James Withers, which lapsed by his death, to part of which, also,
9 the parties before named were entitled, and the amount of said
personal estate distributable to each of said parties is stated in
his report.

And they shew that, on the 7th of April of last year, a decree was passed in said cause, ratifying the report of said auditor, and directing distribution of said personal estate according thereto.

Your orators know not how much of said personal estate may have been distributed by said executor in conformity with said decree, but claim that if any part of it remains undistributed in his hands, he is clearly bound to account for and pay it to your orators.

And your orators are further advised that said executor was bound by law to take notice of the proceedings and decrees of the late circuit court of this district, which are a part of the records of your hon. court in the cause instituted by the United States against Selden, Withers & Co., before named, establishing the debt of said
10 Withers and his co-partners to your orators, and they have reason to believe and therefore charge, that he had in fact, notice and knowledge of such proceedings and decrees before the institution of said suit by the Columbian College & others—notice in fact, of the decree rendered as aforesaid in the circuit court of Alexandria County; and they show that, at that time, said Alexandria County and the records of said court were accessible to said executor, and he could easily have ascertained the amount of the indebtedness established by said decree, had he felt any doubt about it. And they further shew that said State of Virginia had employed counsel to investigate the condition of the claim of your orators aforesaid, and said executor was well advised thereof, some months before the institution of said suit against him for distribution.

And your orators shew that counsel so employed did visit this city during the summer before last, and make some preliminary
11 inquiry into the situation of said claim, and upon a more recent visit discovered that said suit for distribution had been begun and concluded in the interval; and they charge that said suit was instituted by the complainants therein with a full knowledge on the part of some, at least, of the just claims of your orators, and hurried through to a conclusion, with a careful avoidance of publication, by which your orators might have had notice of such proceedings and have saved a part of their debt with the express design to effect a distribution of said estate in such manner as to defeat your orators' just claims against said estate; that said executor failed to bring to the notice of your hon. court, the record evidence of said claim; but, on the contrary, pretended that there were defences against the same, which pretense was utterly groundless, and thus aided the efforts of the complainants to accomplish their object aforesaid.

Your orators are therefore advised that said executor was
12 bound to retain the assets in his hands to meet said claim, and is bound now to account for the full amount of said assetts to your orators, as if no distribution had taken place, and that the decree aforesaid in a cause not defended by said executor, as it ought to have been, and to which your orators were not parties, is no protection to him against said claim.

Your orators are further advised that they are entitled to follow the fund so distributed into the hands of the legatees of said Withers, and to a decree of your hon. court against such of them as may be reached by the process of this court, to refund the amounts received by them respectively, and apply the same to the debt due your orators aforesaid. They shew that the Columbian College received in said distribution the sum of $11,734.60 in cash, besides a large amount of stocks or the proceeds of such stocks, and said executor himself received as one of the legatees and next of kin, $4,302.68, and a large amount of stocks, 13 which said sums of money and stocks your orators are justly entitled.

And your orators further shew that said John Withers died seized of certain real estate in the District of Columbia, and intestate thereof, viz: Of a certain interest in the property known as the National Hotel, which was represented by twenty shares of the stock of a joint-stock company owning said property; also, of lot No. two, (2,) in square No. 231, and of lot No. 4, in square No. 229, all in the city of Washington; all which, by reason of his intestacy, has descended to his heirs-at-law, and is liable for the debts of said Withers, and which your orators are entitled to have sold under decree of your honorable court, and the proceeds applied to their claim aforesaid.

And they shew that the heirs-at-law of said Jno. Withers were as follows, viz., John A., James W., Cave W., & Zeph. English, and Ann M. Adams, children of his sister Sally English; Peter Lucas, Sally W. Gray, Mary Berry, Ann E. Dullabella, Fielding & Walter Lucas, Mary
14 S. Kalonback and Fielder Long, descendants of his sister, Betsy
Lucas; Elizabeth Maddan, John A. Holtzman, W'm B. Holtzman, Rob't B. McCormick, Eliz'th J. Berry, Sarah C. Drayer, Susan E. Freas, Mary V. Withers, Louisa Withers, Achsah Withers, & Thomas Withers, all descendants of his brother, Augustine Withers; Mary C. Rankin, Letitia Garrard, Rob't Withers, Mary Withers, & Nannie Withers, children of a deceased brother, Jennings Withers; Margaret Kennerly, Roberta Kendrick, and Jennette Moseby, children of James Withers; John B. Withers and Attawa Gulick, children of Walter Withers, a dec'd brother, all of which heirs-at-law, they are informed, reside out of the District of Columbia, except said Zeph. English.

Your orators further shew that in the month of February, 1856, said John Withers conveyed certain valuable property in the city of Washington, known as lots Nos. 42 and 43, in reservation No. 10 to the Columbian College aforesaid, for the nominal consideration of
15 $18,000; but as your orators are informed and believe, and there-
fore charge, said conveyance was really a mere gift to said institution, and no actual payment of money or other valuable consideration passed from said college in exchange for said property, and your orators charge that said Withers was hopelessly insolvent and unable to pay his debts, including the heavy debt to your orators aforesaid, at that time, and that said conveyance was made with obvious intent to hinder, delay, and defraud your orators in the collection of their said debt from him; that said conveyance, therefore, was wholly void as against them, and they are entitled to have the same set aside and declared null & void, and said property sold for the payment of said debt.

And your orators are informed and believe that the whole personal and real estate left by said John Withers are wholly insufficient for the payment of his afore-mentioned indebtedness to your orators.

In tender consideration whereof and forasmuch as your orators
16 are without adequate relief at common law, and to the end that
the said John A. English, James W., Cave W., & Zeph. English, Ann M. Adams; Peter Lucas, Sally W. Gray, Mary Berry, Ann E. Dullabella, Fielding & Walker Lucas, Mary S. Kalonback, Fielder Long, Elizabeth Maddan, John A. Holtzman, W'm B. Holtzman, Rob't B. McCormick, Eliz'th J. Berry, Sarah C. Drayer, Susan E. Freas, Mary V. Withers, Louisa Withers, Achsah Withers, & Thomas Withers, Mary C. Rankin, Letitia Garrard, Rob't Withers, Mary Withers, & Nannie Withers, Margaret Kennerly, Robert Kendrick, and Jennette

Moseby, John B. Withers, Atta. Gulick, Geo. W. Samson, and said Columbian College, may be made parties defendants hereto and may be required to make true, full, and perfect answers, on their corporal oaths, to the several matters herein set forth, and that the said Zeph. English, as executor of said John Withers, may be required to account for and pay over to your orators the full amount of the personal estate
17 of said deceased applicable to the debt due your orators; and in
particular, that said Zeph. English and the Columbian College, and the other legatees aforesaid, may be required to refund the several amounts distributed to them as aforesaid, and the same may be applied to the debt due from said Withers to your orators; that the said deed from John Withers to the Columbian College may be declared void, and the property therein described sold and the proceeds applied to the payment of said indebtedness, and that the intestate real property aforesaid may be sold for the same object; and that your honors may grant such other and further relief in the premises as may be just and equitable—all which they humbly pray—may it please your honors, the premises considered, to grant the usual writ of subpœna against said defendants, and an order of publication against such of them as reside out of the District of Columbia. And they will ever pray, &c.

18 *Exhibit No. 1, to bill of complaint.*

In the records and proceedings of the circuit court of Alexandria County will be found the following case:

THE BOARD OF PUBLIC WORKS OF VIRGINIA,
plaintiffs,
against
WILLIAM SELDEN, JOHN WITHERS,* LAWRENCE P. Bayne, George W. Carlyle Whiting, and Robert W. Latham, late copartners under the firm of Selden, Withers & Co., William Bayne, John A. English, Willis P. Bocock, and Andrew Wylie, defendants.

Be it remembered that on the 2d day of September, 1858, came the plaintiffs, by counsel, and sued out of the office of the said circuit court a subpœna in chancery against the defendants; which said subpœna is in the words and figures following, to wit:

The Commonwealth of Virginia to the sheriff of Alexandria County, greeting:

We command you to summon William Selden, John Withers,
19 Lawrence P. Bayne, George W. Carlyle Whiting, & Robert W.
Latham, late copartners under the firm of Selden, Withers & Co.; William Bayne, John A. English, Willis P. Bocock, and Andrew Wylie to appear at the rules to be held in the clerk's office of our circuit court of the county of Alexandria, at the court-house of the said county, on the first Monday in September, 1858, to answer a bill in chancery exhibited against them in said court by the Board of Public Works of Virginia, and unless they shall answer the said bill according to law, the court will take the same as confessed, and decree accordingly. And this they shall in no wise omit under the penalty of £100, and have then there this writ.

Witness Robert Alexander Sinclair, clerk of our circuit court, at the court-house aforesaid, this 2d day of September, 1858, and in the 83d year of the Commonwealth.

R. A. SINCLAIR.

And at another day, to wit, at rules held in the clerk's office of Alexandria circuit court on the first Monday in October, 1858,
20 came the plaintiffs, by counsel, and filed their bill of complaint
against the defendants; which said bill is in these words, to wit:

Bill of complaint.

To the Hon. John W. Tyler, judge of the circuit court for Alexandria County:

The Board of Public Works of Virginia respectfully complaining show to your honor the following facts as the ground of this their complaint: In the month of October, 1850, a certain W'm Selden united with John Withers, Lawrence P. Bayne, and Robert W. Latham in a copartnership for banking and exchange in the city of Washington, and for other purposes. In June. 1852, the said W'm Selden, with the assent of his copartners, sold all his interest in the copartnership to a certain George W. Carlyle Whiting, but agreed to permit his name to be used in the transactions of the firm as before, for the purpose of giving credit to the same with the public. The name of the said firm from its constitution in October, 1850, until the period of its failure in November, 1854,
21 was unchanged, notwithstanding the change made in June, 1852,
just referred to, and it was always known to the public as the house of Selden, Withers & Company, and was composed of the following persons: W'm Selden, John Withers, Lawrence P. Bayne, and Robert W. Latham until June, 1852, and after that time it was composed of the same parties with the addition of George W. Carlyle Whiting aforesaid.

The Board of Public Works in whom was reposed by law the duty of conducting the internal improvements of the State of Virginia and of selling her bonds to raise funds to carry them forward, confiding in the character and ability of the house of Selden, Withers & Company, and especially in the well-known wealth of John Withers, then, and W'm Selden formerly, a citizen of Virginia, formed a contract with the said house July 9, 1853, by which the said board constituted the said firm of Selden, Withers & Company its agents "to make sale of coupon bonds of the said State to the amount of six millions of dollars" upon
23 certain terms set forth in the written contract of that date. The
said contract is referred to and prayed to be taken as a part of this bill, according to a true copy of the original in the hands of the board of public works herewith filed, marked "Complainants' Exhibit A.") A copy of the said contract may be found in the documents of session 1855–6, part 5, doc. No. 44, pp. 15, 16.) It was duly executed and signed by the president of the board, and by Selden, Withers & Co. In accordance with the provisions of that contract the board delivered to the said firm, from time to time, a large amount of coupon bonds, sc't $4,057,000.00, according to a certified list filed herewith and prayed to be taken as a part of this bill, marked "Complainants' Exhibit B." In addition, there were £75,000 of sterling bonds delivered to the said firm and sold by them, and not fully accounted for by the firm, leaving a large balance still due upon them. There was remitted to the board by the said firm from time to time $3,457.000 on account of the coupons listed in "Exhibit B." A list of said remit-

23 tances is herewith filed and prayed to be taken as a part of
this bill, marked "Complainants' Exhibit C." It will be seen
by an inspection of Exhibits B & C that the delivery of bonds extended from Aug. 18, 1853, to Nov. 7, 1854, and that the remittances extended from Sept. 10, 1853, to Nov. 7, 1854. In November 1854, the firm of Selden, Withers & Co. failed, and the board ceased to deliver any more bonds to the firm, and of course further remittances ceased. The board endeavored in vain to obtain from the said firm the preference for the debt due to it, which was proper from the trust character of the transactions from which it arose, and the security which it has received has been entirely inadequate to the discharge of the heavy *of the heavy* liability incurred by the said firm as the agents of the board. On the 29th day of November, 1854, John Withers, Lawrence P. Bayne, G. W. Carlyle Whiting, and R. W. Latham conveyed to John A. English and W'm Bayne a large amount of
asse*tt*s belonging to the firm, in trust, to secure, first, the
24 proper expenses of the trust, and then three classes of creditors,
the State of Virginia being in the last class, and postponed to
two large classes of creditors. A copy of said deed is herewith filed, marked "Complainant's Exhibit D," and prayed to be taken as a part of this bill. It will be seen from an inspection of this deed, that the amount of the debt due to the State of Virginia is not stated, but is said "yet to be ascertained." After repeated solicitations, the said John Withers, one of the said firm, on the 24th day of January, 1855, executed to Willis P. Bocock and Andrew Wylie a deed of trust conveying certain real property therein set forth, lying and being in the city and county of Alexandria. The said deed, after reciting that the late firm of Selden, Withers & Co. are indebted to the State in a large balance, "the amount not yet adjusted and ascertained," and the said
John Withers "is desirous, as far as he is able, to furnish to said
25 Commonwealth, out of his private means, sufficient security for
any balance of its debt that may remain unsatisfied out of the
social assets conveyed," provides that the trustees shall take possession of all the property, except the dwelling-house, of said Withers, and, out of the rents and profits, pay costs of the trust and taxes, and then apply the residue to the debt due the State, and, in case of requisition made by the proper authority of the State, to sell the said property, &c. A copy of the said deed is herewith filed, marked "Complainant's Exhibit E," and prayed to be taken as a part of this bill. The said John Withers also conveyed to the same trustees certain property in St. Louis, Missouri, and some shares of stock in Cumberland coal property. By reference to the deed of trust from the firm to English & Bayne, it will be seen that it was provided that certain bonds of the Chesapeake & Ohio Canal Company should be, upon the
call of the partners, under certain conditions, handed over to the
26 agents of the State. Under this provision of said deed, John
Withers, R. W. Latham, L. P. Bayne, and G. W. Carlyle Whiting
directed the delivery to the board of public works of a large number of said bonds, to be held as collateral security for the debt due to the State of Virginia. By the terms of the receipt executed for said bonds, they were not to be sold for the term of three years from its date, sct., Jan. 26, 1855. A copy of the paper, signed as above, directing the delivery, and of the receipt by the board of public works, is herewith filed, marked "Complainant's Exhibit F," & prayed to be taken as a part of this bill. After the execution of these several deeds, the board, by W. B. Bocock, late attorney general of Virginia, and by other coun-

sel, endeavored to adjust and ascertain the balance due by the said
firm to the State, under the contract with the board. In these
27 efforts the board was aided by the late cashier of the house, Mr.
Bester, and by the trustees of the firm.

By reference to Exhibits B & C it will be found that there was due to the board upon

sum of $600,000. There was due to the board, upon the delivery of the £75,000 sterling bonds, the sum of $240,000. Premiums of two per cent. had been received by the firm upon $440,000 of bonds, making $8,800.00; the other items of indebtedness for interest for coupons, &c., swelled the gross indebtedness of the firm to the board to $901,725.90. The board was desirous of dealing liberally with the firm in its misfortunes. Accordingly it relieved the firm from liability for $111,000 of bonds delivered by it to a certain W'm Sturgis, but not paid for by him, and took the notes of said Sturges for the same, and interest and coupons thereon, and credited the amount thereof to Selden, Withers & Co. as the sum of $133,687.01. It further
credited $115,614 on a similar transaction with Atwood & Rubec.
28 It allowed as compensation to the firm $66,200.72. It credited
also $149,350 on account of certain bonds lost on the steamer
Arctic, with their coupons. After allowing these several credits, the balance found due by Selden, Withers & Company to the board of public works, on the 1st day of January, 1855, is $436,874.17. The board are satisfied that this balance, at the least, is due to it by the said firm; and if it had relied upon strictest legal rights, the balance would unquestionably have been larger. The members of the firm, it is believed, who were privy to the settlements, cheerfully agreed to it as one which was liberal to the firm. The board are now willing to settle with the firm upon the basis of that settlement; but, if objected to, will reserve the right to insist upon all of its legal rights. A copy
of said account, in the handwriting of Mr. Bester, cashier of the
29 late firm of Selden, Withers & Co., is herewith filed, marked
"Complainant's Exhibit G," and prayed to be taken as a part of
this bill. After the failure of the firm, the board, upon legal advice, proceeded to attach the property of the firm in the city and State of New York. Messrs. Latham and Bayne, two of the firm, were personally served with process in these suits, and said G. W. C. Whiting also appeared and contested the suit. Judgment was rendered in New York against the members of the firm for the sum of $489,777.88, and an allowance, &c., amounting in all to $502,140.60. A copy of said judgment is herewith filed, marked "Complainant's Exhibit H."

The board, by the proceeding in New York, have realized nothing upon their claim. The lots sold for $250.00, having been bought in
by the counsel of the board, who made an arrangement with the
30 counsel of Selden, Withers & Co. to convey them to some person
in trust, to hold them until a more favorable time for sale, and
then to sell, and apply the proceeds to the balance due the board.

A suit was instituted in the city of Washington by the United States against the firm aforesaid and their trustees a short time after the failure. All the members of the firm have appeared in that suit, and most, if not all, the creditors of the firm have been summoned before the court, or have appeared in person. The claims of the Board of Public Works have been audited in that suit, and the auditor has reported the balance due the board by the firm, according to the statement filed herewith as Exhibit G. It has not been excepted to by any one of the parties in any part of the proceedings.

The assets of the firm have been distributed under various
31 orders in that suit, and it is now supposed, as the board are in-
formed, that the board will realize from the social assets but a
small part of the large debt reported to be due. Thus far but $30,000.00
have been paid to the board from that source, and its counsel, Mr. Bex-
ter, estimates the extent of further payments from the social fund not
to exceed $80,000.00. The present counsel of the board has been in-
formed that it cannot be reasonably expected to be so much. In fact,
the board is led to fear that all that may be realized from the social fund
will not pay the interest accrued to this time upon its heavy debt, amount-
ing to nearly $100,000.00. The board have anxiously hoped that the
solvent, and, as is believed, wealthy members of the late firm would
have, before this time, made some satisfactory arrangement for pay-
ment of this just debt. A trust reposed by the board in the
32 house has been met by an unwillingness to discharge a legal and
moral responsibility on the part of its members, which, at the end
of nearly four years, may well demand a resort to legal remedies, where
all others have utterly failed.

The board is advised that the firm of Selden, Withers & Co. were by the contract of July 9th, 1853, constituted its fiduciaries, and were by its terms liable to account, after reasonable time, for all funds which were or ought to have been realized from the proper discharge of the trusts reposed in them; that the said firm having failed to do so, the settlement of their accounts is a proper subject for the cognizance of a court of equity.

The board is further advised that, in consideration of the fact that
the amount really due was unascertained at the time of the exe-
33 cution of the deeds of trust from the firm and from John Withers;
and that said John Withers has not personally and expressly recog-
nized the amount actually due, it would not be proper to call upon the
trustees to execute the trust vested in them by the deed from John
Withers alone until court of equity had passed upon the account.

The board is further advised that the Chesapeake and Ohio Canal bonds held by them as collateral security for the debt due to it by said firm should now be sold under the order of this court, and the proceeds credited on said debt.

In tender consideration of all which, and forasmuch as the Board
of Public Works is remidiless in the premises, save in a court of equity,
the said board prays that W'm Selden, John Withers, Lawrence P.
Bayne, George W. Carlyle Whiting, R. W. Latham, W'm Bayne,
34 John A. English, Willis P. Bocock, and Andrew Wylie be made par-
ties-defendant to this bill and answer the same upon oath; that
the members of the late firm of Selden, Withers & Co. would state in
their answers whether the Exhibits B & C are not true and proper
statements of the bonds delivered to the firm and of all the sums re-
mitted to the board; also whether they have not seen and assented to,
directly or by agent, the account filed as Exhibit G, and whether the
same is not just and correct; and if the said accounts B, C, & G are
not correct, to state wherein they are not; also, that each member of
the firm would fully answer to the various allegations of this bill as if
thereto specially required, including therein the averments respecting
the contracts, deeds, and other papers, copies whereof are herewith ex-
hibited.

The board further prays that the court would direct all proper
35 accounts of the trust-funds in the hands of English & Bayne
aforesaid, showing the amount due by them or still to be col-

lected by them and payable to the board under the contract of July 9th, 1853; that the court would direct a sale of all the real property conveyed by John Withers under his deed to Bocock and Wylie, applying the proceeds to the debt due to the board; also, the sale of said Chesapeake and Ohio Canal bonds. The board further prays for a decree against all the members of said firm for the amount of debt due to it by said firm, and that the court would make such orders in respect to the said trusts and property conveyed under the several deeds, and for the enforcement of the rights of the board would accord such general relief as is consistent with equity and good conscience. And the board will ever pray, &c.

J. R. TUCKER,
L. B. TAYLOR,
Compl't's Solicitors.

36 COMPLAINANT'S EXHIBIT A.—*Contract of July 9th*, 1853.

This agreement witnesseth that the Board of Public Works of Virginia, having occasion to borrow money upon the credit of the State, have appointed Selden, Withers & Co., of the city of Washington, their agents to make sale of coupon-bonds of the said State to the amount of six millions of dollars on the terms herein set forth.

1. Selden, Withers & Co. are to determine whether the bonds to be sold under this contract shall be six-per-cent. coupon-bonds, as heretofore issued by the Board of Public Works, or five-per-cent. sterling coupon-bonds.

2. The engraving of the bonds to be sold under this contract shall be executed under the direction of Selden, Withers & Co. at the expense of the State.

37 3. The principal and interest of the said bonds shall be made payable in the city of New York or London, as may be determined between Selden, Withers & Co. and the parties that may purchase the bonds.

4. The price at which the bonds shall be sold is to be regulated by Selden, Withers & Co., with this exception, that no bonds shall be sold under this contract at a price below their par value without the special direction and authority of the Board of Public Works; but said board hereby reserves to itself the right to fix a higher minimum price whenever they may think proper before a sale.

5. Selden, Withers & Co. are to pay all expenses of carrying into effect their agency created by this agreement, and in full satisfaction of all expenses and trouble of said agency are to have a commission of one per cent. on the gross amount of their sales.

38 6. The gross money raised by each sale for principal, interest, and premium, less their commission of one per cent. as aforesaid, they shall, in a reasonable time after the sale, pay over to the board.

7. In order to furnish to Selden, Withers & Co. all the facilities for availing themselves of opportunities to sell at the highest prices, the board will, from time to time, place in their hands a head of sales bonds to be sold under this contract, not exceeding in amount five hundred thousand dollars; and in order to save the board from the necessity at any time of causing forced sales, and of reducing the price of the bonds below their par value in order to effect such sales, Selden, Withers & Co. agree that, if the board shall at any time be in present want of funds before sales have been made, they will, if required, advance to
39 the board, from time to time, such amounts as may be necessary

to meet the demands upon the board, over and above sales previously made, and in anticipation of sales thereafter to be made upon receipt of bonds to that amount; any such advancements to be reimbursed to them out of such after sales, with interest at the rate of six per cent. per annum.

8. All payments to the board of public works, under this agreement, to be made as heretofore, namely, by depositing the money in one of the banks at Richmond to the credit of the said board.

9. During the existance of this agency, which shall continue till it is fully executed, or till the board shall see cause to terminate it for infidelity, or suspicion of infidelity, on the part of their said agent, the board will not appoint another agent to sell coupon-bonds, nor sell such bonds to other persons, without first conferring with Selden, Withers & Co.

40 10. It is further agreed between the parties that, to the extent of the issue of bonds made payable in New York semi-annually, and not less than fifteen days before the interest thereon shall fall due, and to the extent of the issue of bonds made payable in London semi-annually, and not less than sixty days before the interest thereon shall full due, there shall be placed in one of the banks of the city of Richmond, to the credit of Selden, Withers & Co., in specie funds, an amount equal to said semi-annual interest; and Selden, Withers & Co., in consideration thereof, are faithfully to pay the said interest in the city of New York, and in London, when due. But the board of public works shall have the right at any time, with or without cause, to withdraw and terminate this agency for paying interest as aforesaid, and to refuse to make the deposit for that purpose.

41 Finally. It agreed between the parties that the board of public works shall have the benefit of the exchange between the United States and Europe on all bonds sold under this contract in the latter country, which exchange is to be accounted for by Selden, Withers & Co. as a part of the gross amount of sales upon which they are to receive a commission of one per cent. as aforesaid.

In witness of which, Archibald Graham, the president of the board of public works, and Selden, Withers & Co. have hereunto set their hands this the ninth day of July, A. D. 1853.

(Signed) ARCH'D GRAHAM.
(Signed) SELDEN, WITHERS & CO.

COMPLAINANT'S EXHIBIT B.—*List of numbers of coupon-bonds and their am't, delivered to Selden, Withers & Co., under contract of July 9, 1853.*

1853.				
Aug. 18.	From No. 5451	to 5700,	250	250,000
Sept. 6.	5701	6000,	300	300,000
19.	6001	6150,	150	150,000
27.	6151	6200,	50	50,000
42				
29.	6201	6250,	50	50,000
Oct. 1.	From No. 6251	6290,	40	40,000
4.	6291	6425,	135	135,000
10.	6426	6450,	25	25,000
11.	6451	6485,	35	35,000
12.	6486	6505,	20	20,000
14.	6506	6535,	30	30,000
17.	6536	6555,	20	20,000
19.	6556	6590,	35	35,000

24.		6591	6620.	30	30,000
31.		6621	6715,	95	95,000
Nov. 7.		6716	6780,	65	65,000
11.		6781	6805,	25	25,000
12.		6806	6815,	10	10,000
14.		6816	6845,	30	30,000
17.		6846	6960,	115	115,000
21.		6961	7010,	50	50,000
23.		7011	7022,	12	12,000
"		7023	7047,	25	25,000
25.		7048	7050,	3	3,000
28.		7051	7115,	65	65,000
30.		7116	7135,	20	20,000
Dec. 1.		7136	7145,	10	10,000
43					
2.		7146	7155,	10	10,000
2.		7156	7280,	125	125,000
3.		*7281	7290,	10	10,000
5.		7291	7300,	10	10,000
6.		7301	7315,	15	15,000
6.		7316	7365,	50	50,000
7.		7366	7375,	10	10,000
8.		7376	7385,	10	10,000
12.		7386	7395,	10	10,000
13.		7396	7410,	15	15,000
14.		7411	7425,	15	15,000
15.		7426	7430,	5	5,000
16.		7431	7440,	10	10,000
17.		7441	7450,	10	10,000
21.		7451	7500,	50	50,000
"		7501	7550,	50	50,000
23.		7551	7610,	60	60,000
"		7611	7630,	20	20,000
1854					
Jan. 5.		7631	7655,	25	25,000
6.		7656	7665,	10	10,000
10.		7666	7690,	25	25,000
44					
13.		7691	7715,	25	25,000
14.		7716	7725,	10	10,000
17.		7726	7740,	15	15,000
28.		7741	7750,	10	10,000
Feb. 2.		7751	7765,	15	15,000
Ap'l 8.	From	7766	7785,	20	20,000
"		7786	7802,	17	17,000
18.		7803	7820,	18	18,000
19.		7821	7850,	30	30,000
21.		7851	7865,	15	15,000
25.		7866	7885,	20	20,000
May 6.		7886	7950,	65	65,000
11.		7951	7965,	15	15,000
13.		7966	7970,	5	5,000
17.		7971	7995,	25	25,000
18.		7996	8010,	15	15,000

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*Coupons for January 18, from 7281.

22,		8011		8070,	60	60,000
25.		8071		8080,	10	10,000
29.		8081		8100,	20	20,000
31.		8101		8120,	20	20,000
June 1.		*8121		8130,	10	10,000
5.		8131		8165,	35	35,000
45						
9.		8166		8175,	10	10,000
12.		8176		8225,	50	50,000
14.		8226		8250,	25	25,000
15.		8251		8315,	65	65,000
16,		8316		8380,	65	65,000
17.		8381		8435,	55	55,000
20.		8436		8445,	10	10,000
21.		8446		8460,	15	15,000
24.		8461		8475,	15	15,000
26.		8476		8485,	10	10,000
July 1.		8486		8500,	15	15,000
8.		8501		8540,	40	40,000
14.		8541		8590,	50	50,000
15.		8591		8610,	20	20,000
18.		8611		8635,	25	25,000
20.		8636		8645,	10	10,000
21.		8646		8675,	30	30,000
24.		8676		8695,	20	20,000
27.		8696		8705,	10	10,000
28.		8706		8715,	10	10,000
Aug. 1.		8716		8750,	35	35,000
2.		8751		8800,	50	50,000
46						
1854.						
5.	From No.	8801	to	8820,	20	20,000
11.		8821		8900,	80	80,000
12.		8901		8910,	10	10,000
14.		8911		8920,	10	10,000
15.		8921		8930,	10	10,000
16.		8931		8945,	15	15,000
17.		8946		9000,	55	55,000
18.		9001		9065,	65	65,000
21.		9066		9075,	10	10,000
23.		9076		9085,	10	10,000
26.		9086		9095,	10	10,000
30.		9096		9105,	10	10,000
Sep. 1.		9106		9115,	10	10,000
5.		9116		9125,	10	10,000
6.		9126		9135,	10	10,000
9.		9136		9145,	10	10,000
14.		9146		9155,	10	10,000
15.		9156		9205,	50	50,000
18.		9206		9215,	10	10,000
20.		9216		9260,	45	45,000
21.		9261		9275,	15	15,000
22.		9276		9315,	20	20,000
47						

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* Coupons for July 1854, from 8121.

23.	9296	9315,	20	20,000
26.	9316	9375,	60	60,000
27.	9376	9395,	20	20,000
29.	9396	9405,	10	10,000
30.	9406	9410,	5	5,000
"	9466	9470,	5	5,000
Oct. 2.	9411	9435,	25	25,000
26.	9436	9449,	14	14,000
Nov. 1.	9450	9461,	12	12,000
3.	9462	9465,	4	4,000
"	9471	9476,	6	6,000
6.	9477	9491,	15	15,000
7.	9492	9507,	16	16,000
			4,057	$4,057,000

48 COMPLAINANT'S EXHIBIT C.—*Statement exhibiting the dates of the remittances and the amount of such remittances by Selden, Withers & Co. under contract July* 9, 1853.

1853.							
Sep.	10.	Remitted....	20,000.	Dec.	2.	Remitted....	125,000
	15.	"	120,000.		3.	"	10,000
	16.	"	10,000.		5.	"	10,000
	20.	"	60,000.		6.	"	15,000
	29.	"	55,000.		"	"	50,000
Oct.	1.	"	25,000.		7.	"	10,000
	3.	"	160,000.		8.	"	10,000
	8.	"	20,000.		12.	"	10,000
	10.	"	15,000.	*Sep.	5.	"	50,000
	12.	"	20,000.	Dec.	13.	"	15,000
	14.	"	30,000.		14.	"	15,000
	17.	"	20,000.		15.	"	5,000
	18.	"	35,000.		16.	"	10,000
	24.	"	30,000.		17.	"	10,000
	26.	"	15,000.		22.	"	10,000
	28.	"	20,000.		23.	"	60,000
	7.	"	25,000.		24.	"	10,000
				1854.			
	31.	"	35,000.	Jan.	3.	"	30,000

49

1853.				1854.			
Nov.	7.	Remitted....	65,000.		4.	Remitted....	5,000
	11.	"	25,000.		10.	"	25,000
	12.	"	10,000.		12.	"	25,000
	14.	"	30,000.		14.	"	25,000
	17.	"	115,000.		28.	"	10,000
	21.	"	50,000.	Feb.	2.	"	15,000
	23.	"	12,000.	Ap'l	3.	"	20,000
	25.	"	3,000.		6.	"	20,000
	23.	"	25,000.		14.	"	15,000
	28.	"	65,000.		15.	"	10,000
	30.	"	20,000.		19.	"	20,000

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* Omitted.

Dec.	1.	“	10,000.		20.	“	15,000
	2.	“	10,000.		24.	“	30,000
1854.							
Ap'l	26.	“	65,000.	July	24.	“	20,000
May	11.	“	10,000.		27.	“	10,000
	17.	“	25,000.		28.	“	10,000
	18.	“	15,000.		31.	“	50,000
	22.	“	60,000.	Aug.	1.	“	35,000
	25.	“	10,000.		2.	“	10,000
	29.	“	20,000.		5.	“ ...	10,000
	31.	“	20,000.		11.	“	80,000
June	1.	“	10,000.		12.	“	10,000

50

1854.				1854.			
June	5.	Remitted....	35,000.	Aug.	14.	Remitted....	10,000
	9.	“	10,000.		15.	“	10,000
	12.	“	50,000.		16.	“	15,000
	14.	“	60,000.		17.	“	70,000
	15.	“	140,000.		18.	“	50,000
	16.	“	10,000.		21.	“	10,000
	19.	“	10,000.		23.	“	10,000
	21.	“	15,000.		26.	“	10,000
	26.	“	10,000.		30.	“	10,000
	24.	“	15,000.	Sept.	1.	“	10,000
July	1.	“	15,000.		5.	“	10,000
	3.	“	15,000.		6.	“	10,000
	5.	“	15,000.		9.	“	10,000
	7.	“	10,000.		14.	“	10,000
	14.	“	50,000.		15.	“	50,000
	15.	“	20,000.		18.	“	10,000
	20.	“	30,000.		20.	“	45,000
	21.	“	10,000.		21.	“	15,000
	18.	“	25,000.		22.	“	20,000
Sep.	23.	“	20,000.	Oct.	26.	“	14,000
	26.	“	60,000.	Nov.	1.	“	12,000
	27.	“	20,000.		3.	“	10,000

51

1854.							
Sep.	29.	Remitted....	10,000.		6.	Remitted....	15,000
	30.	“	10,000.		7.	“	16,000
Oct.	3.	“	25,000.				
							$3,457,000

Complainant's Exhibit D.

Doc. No. 17.] A.

Deed of trust from John Withers and others to John A. English and William Bayne.

This indenture made and entered into this 29th day of November, 1854, by and between John Withers and Lawrence P. Bayne, of the town of Alexandria, and State of Virginia, and George W. Carlyle Whiting and Robert W. Latham, of the city of Washington, of the one part, John A. English and William Bayne, of Alexandria, Virginia, trustees, of the second part, and all the creditors of the firm of Selden, Withers & Co., late copartners of the transaction of banking and exchange in the city of Washington, of the third part.

Whereas the said copartnership, formed in the month of October, 1850, consisted, when formed, of one William Selden, of the 52 said city of Washington, and the said John Withers, Lawrence P. Bayne, and Robert W. Latham, who continued to constitute the said copartnership until the 7th day of June, 1852, when the said William Selden, with the assent of his said partners, sold out all his interest in the said copartnership to the said George W. Carlyle Whiting, who, thereupon, took the place of said Selden in said copartnership, the said Selden agreeing to permit his name to be continued in the said copartnership and to be used by the said partners in the transaction of the business of the firm, which has been done up to the expiration of said firm, the said Selden having, however, *having* no beneficial interest in the transactions of said firm, and no participation therein, the said Whiting, Bayne, and Latham, agreeing to indemnify said Selden, as well against all liabilities resting upon him as one of said firm at 53 the time of his said sale to Whiting, as against such as he might hereafter incur by the use of his name in the transactions of the firm as aforesaid; and the said John Withers agreeing to indemnify him against such liabilities only as he might incur by such use of his name by the firm after the sale to Whiting as aforesaid;

And whereas the said Robert W. Latham did on the 31st day of May, 1854, withdraw from the concern of the said firm, yet with the understanding that he was to hold his interest in said copartnership:

And whereas the said copartnership has expired by its original limitation, and the members of it do not propose to further continue business either upon the terms of the original agreement of copartnership, or under any new agreement;

And whereas the said copartnership is the owner of, or rather, 54 the assets of said copartnership consist of, sundry real and personal estate, bonds, bills, notes, stock, rights, credits, claims, and demands, legal and equitable; which assets are believed to be fully and accurately described in schedule hereto annexed, marked A, made a part of this deed;

And whereas the said copartnership is indebted to sundry individuals, companies, copartnerships, and to the State of Virginia, as holders of notes issued by said copartnership, payable to bearer, redeemable in notes of the banks of Virginia, and put into circulation under the denomination of notes of the Exchange Bank, the name and style of the house at which said copartnership transacted its business in the said city of Washington, and for money deposited at their said banking-house, to be held by said firm with and without interest, and for stocks deposited with said firm and used by them with the authority of the depositors, or in such manner the said firm are bound for them; and are in- 55 debted on other accounts; and are especially under an obligation to redeem certain bonds of the Virginia and Tennessee Railroad Company, which they have hypothecated in New York City: and are indebted to the State of Virginia in an amount yet to be ascertained, arising out of the transactions of the firm, as agents of the said State for the sale of her bonds; and the members of the said firm being desirous of having all the assets thereof made available as early as practicable, and applied to the satisfaction of the liabilities of the firm, in the mode hereinafter provided for, which they, upon mature and anxious consideration have deemed most just and equitable:

Now, this indenture witnesseth that for and in consideration of the
premises, and also of the sum of one dollar to them, the parties to the
first part hereto, by the parties of the second part hereto in hand paid, at
and before the sealing and delivery of this indenture, the receipt
56 whereof is hereby acknowledged, they, the parties of the first
part, hereto, to wit, the said John Withers, Lawrence P. Bayne,
George W. Carlyle Whiting, and Robert W. Latham, do and each of them
doth, hereby give, grant, bargain, and sell, alien, enfeiff, assign, convey,
and transfer, and by this indenture have, and each of them hath, given,
granted, bargained, and sold, aliened, enfeoffed, assigned, conveyed, and
transferred to said parties of the second part hereto, to wit, the said
John A. English and William Bayne and their heirs, all the estate,
property, rights, credits, claims, and demands of said copartnership
named, specified, and described in Schedule A, made a part of this indenture
as aforesaid; and all other estate, property, rights, credits,
claims, and demands, if any, belonging to said copartnership, wheresoever
the same may be situated, or of what nature soever the same
57 may be: To have and to hold said property, estate, rights, credits,
claims, and demands hereby conveyed to them, the said John A.
English and William Bayne, and their heirs, to the only proper use and
behoof of the said English and Bayne and their heirs.

Upon trust, nevertheless, that the said trustees will proceed with all
convenient despatch to collect and render available all debts, rights,
credits, claims, and demands due, owing, or belonging to said copartnership;
and shall also make sale of all estate and property, real and personal,
of said copartnership, in order to have the proceeds applied as
early as practicable to the liquidation and satisfaction of the liabilities
of said copartnership, in the manner hereinafter more particularly provided
for; and whereas the estate, property, rights, credits, claims, and
demands hereby conveyed are much scattered and dispersed, and as
many of the debtors of said copartnership may be in doubtful and
58 failing circumstances, so that suits against them might be attended
with much cost without any successful result; and whereas
it will in many cases be best for the interests of all concerned, that private
sales of real and personal estate of said copartnership, hereby conveyed,
or of portions thereof, be from time to time made, the said John
A. English and William Bayne are hereby invested with power to adjust
and settle, in their discretion, by compromise, debts, rights, credits,
claims, or demands belonging to said copartnership, and to make sale
of the real and personal estate hereby conveyed, either at private sale
or public sale, and for cash, or upon reasonable credits, as they, the
said trustees, shall think best calculated to produce the highest price;
and all sales made by said trustees, at public auction, shall be made
upon reasonable previous and public notice of the time and place
59 of sale. And said trustees are hereby invested with power and
authority to appoint agents and attorneys-in-fact under them, so
far as in their judgement the same may be necessary to enable them to
fulfill the trusts hereby devolved upon them; and should either of said
trustees die before the trusts are fully performed and fulfilled, the survivor
shall have all title, power, and authority hereby conferred upon
them jointly.

The said trustee and survivor of them shall apply the assets of the firm, hereby conveyed, when realized, as follows: First. To all proper expenses of the trust; secondly, to the redemption of bonds of the Virginia and Tennessee Railroad Company to the amount of $190,000, in the hands of J. S. Sutter, of New York, agent of the Bank of Hamburg, of

Dennistown, Wood & Co., of New York City, and of the cashier of the Bank of Commerce, of New York; thirdly, to the redemption 60 of the notes issued payable to bearer, payable in notes of Virginia banks, under the name and denomination of Exchange Bank notes, as aforesaid, and known as the circulation of the Exchange Bank; and fourthly and lastly, to all the other creditors of said copartnership, including the State of Virginia, equally; the classes to be fully satisfied in the order in which they are named, that is to say, the second to be satisfied before the third, the third to be satisfied before the fourth and last. The third and fourth classes to share the fund as between the members of said classes ratably. Any balances that may be due to the clerks or employees of the firm are to be taken as a part of the first class of liabilities hereinbefore provided, and to be paid equally with expenses of the trust.

It is, however, hereby provided that if the said partners shall, within sixty days from the date of this deed, agree with the board of 61 public works of Virginia, or other person or persons having authority to act for the State, to any arrangement in relation to the debt due the State, it shall be the duty of said trustees—and they are hereby employed in such event—upon the call of said partners, to deliver over to the agents of the State the bonds of the Chesapeake and Ohio Canal Company, together with the interest coupons and arrears of interest shown by and mentioned in Schedule A aforesaid, or such portion or portions of them as the call of said partners shall embrace, in fulfillment of said agreement, the said partners feeling an earnest desire to arrange the debt due to the State, upon terms satisfactory to all, and consistent with justice to their other creditors. If no such arrangement be made within the time specified, then this deed to stand as if no such provision as this last were contained in it.

62 In testimony whereof the parties have hereto set their hands and affixed their seals this day and year first above written.

JNO. WITHERS. [SEAL.]
L. P. BAYNE. [SEAL.]
G. W. CARLYLE WHITING. [SEAL.]
R. W. LATHAM. [SEAL.]
J. A. ENGLISH. [SEAL.]
W'M BAYNE. [SEAL.]

Signed, sealed, and delivered in presence of—
T. C. DONN.
B. K. MORSELL.

DISTRICT OF COLUMBIA,
County of Washington, ss:

We, Thomas C. Donn, and Benjamin K. Morsell, justices of the peace in and for said county and District aforesaid, do hereby certify that, in our county aforesaid, personally appeared John Withers, Lawrence P. Bayne, George W. Carlyle Whiting, Robert W. Latham, John A. English, and William Bayne, parties to the foregoing and annexed deed or instrument of writing, bearing date this 29th day of November, 1854, they being personally well known to us as such, and 63 acknowledged said deed to be their act and deed for the purpose therein expressed.

Given under our hands and seals this 29th day of November, 1854.

THOMAS C. DONN, *J. P.* [SEAL.]
B. K. MORSELL, *J. P.* [SEAL.]

True copy. Test.

JNO. A. SMITH, *Clerk.*

Statement of assets of Selden, Withers & Co.—Schedule A referred to in and made part of the annexed deed.

R. S. Armstead and others	1,800	83
Atwood, Dunlevy & Co	1	75
Bank of the Valley, Winchester Va	22	46
Bayne, Withers & Co	2,163	64
Bank of Commerce, Philadelphia	354	30
Bank of Winchester	16,000	00
Banking house, situated on the west side of Seventh street, between Louisiana avenue and D street north, number of house 517, and furniture and fixtures of banking-house	17,726	94
64 Brooklyn lots, being twenty lots lying in the Ninth ward of the city of Brooklyn—see record of deed for particulars—cost	5,764	85
Bank of Nashville, Tennessee	55	70
Baring Brothers & Co., London	1,706	19
Burke & Herbert, special account	3,000	00
Bank of Commerce, Fredericksburg, Va	313	24
J. W. Clark & Co., Boston	52	77
Special bonds Chesapeake & Ohio Canal Company and accrued interest thereon to be added (Nos. of bonds, 493, 494, 525, 526, & 527.)	140,000	00
California war-bonds	10,000	00
Canal and Banking Company, New Orleans	41	93
Chesapeake & Ohio Canal bonds	129,500	00
Chesapeake and Ohio Canal bonds in the hands of Frederick County Bank as collateral security	60,000	00
Citizens' Bank of Baltimore	75	40
Railroad Bank, Savannah, Georgia	68	03
65 Dollyhide copper-stock, costs	10,000	00
Dollyhide Company	3,239	31
Farmers' Bank of Virginia, Alexandria	1,174	16
Thomas J. Flack	1	75
Farmers and Merchants' Bank, Baltimore	6	10
Edward Green, treasurer of Manassa' Gap Railroad Company	2,635	00
Gray & Co., Louisville, Kentucky	1	75
Hutchins & Co., Louisville, Kentucky	43	00
$6,000 Illinois internal-improvement interest-stock, cost	3,762	50
Johnston Brothers & Co., circulation account	6,000	00
R. W. Latham & Co	29,791	51
R. W. Latham, pension-agent	12,704	41
J. H. Lathrop, navy-agent	50	00
Johnston Brothers & Co	347	00
Loker, Renick & Co	44	09
Lots purchased: Nos. 3, 4, 5, 6, 42, 43, 44, 45, 30, 31, 32, 22, 23, and 24, situated in the city of Washington, in square numbered 513 in said city, cost	9,567	22
H. H. Miller, Guyandotte, Virginia	101	50
66 Maury & Morton	142	36
G. H. Monsarrat & Co	2,912	04

J. R. Morton & Co	5,000 00
G. H. Monsarrat, agent land-fund, lands purchased in connection with G. H. Monsarrat and others, lying in the States of Ohio, Indiana, and Illinois, upon the line of the Ohio and Mississippi Railroad, and held in the names of C. Hall, George W. Cochran, and others, cost	21,170 00
Mineral Bank, Cumberland, Maryland	5 32
Northwestern Bank of Virginia, Wheeling	6 00
Northwestern Bank of Virginia, Jeffersonville	18 83
A. A. Noonan, Milwaukie, Wisconsin	2 45
C. W. Purcell & Co	4 12
Potomac Savings Bank notes	1,709 00
C. W. Purcell & Co., special	505 56
Patriotic Bank stock, 3,158 shares	31,730 00
Pickett, Macmurdo & Co	26 00
Planters' Bank, Memphis, Tennessee	1 75
South Side Railroad Company	25 00
Stock, Fairmount Bank	5,000 00
Scott & Thompson	1 75
67 Stock Union Coal and Iron Company, cost	23,531 60
Stock Metropolitan Railroad Company	100 00
Stock Union Plank or Turnpike Company, 40 shares	1,000 00
Peter Smith	28 80
Fairmount Bank of Virginia	12 33
St. John, Powers & Co	59 41
Texas bonds, amount $3,744.33, cash	1,840 50
Bank of Louisville, Kentucky	686 58
Farmers' Bank of Virginia, Lynchburg	87 75
Union Land Company scrip	1,040 00
J. T. Van Vleck & Read	859 74
H. L. Wilson	1 75
	$565,626 03

Balance due from individuals as per ledger.

C. City accounts:

A. G. Atocha	04
S. Armistead	67 00
R. Armstrong	32,437 88
W. C. Bestar	236 02
L. P. Bayne	4,013 34
H. Bastablet	113 75
J. P. Brown	198 76
68 J. H. Bartlett, (treasurer,)	71
Byers & McKnew	129 72
T. M. Blount	35 00
W. B. Berryman	12 16
T. P. & M. Brown	4 75
T. B. Browne	13 18
L. Clephane	18 63
J. Cole	30 00
S. Cole	73 64
C. B. Calvert	2,976 04
W. M. Clunkwell	9 32

	G. A. D. Clarke	60	36
	J. F. Comstock	1	75
	R. Clarke	3	75
	S. Clinton	20	00
	J. F. Coyle		09
	S. A. Douglas	977	29
	J. Dowling	18	35
	H. McCormack	478	03
	G. French & Co	22	86
	E. Fisher	7	90
	Estate of T. French	1,967	61
	H. C. Stewart & Co	5	48
69	G. Hill, j'r	28	86
	R. G. Hyatt	25	16
	J. D. Hoover	559	09
	E. Harte	11	00
	A. Harris	719	42
	T. J. Johnson	20	04
	B. T. Ingram	9	67
	J. Jamison	17	95
	J. Johnson	6	50
	J. C. G. Kennedy	80	54
	R. W. Latham	8,308	48
	J. C. Lewis	1	98
	R. W. Latham, (agent,)	164	92
	F. A. Lutz	42	51
	Lenman & Brothers	65	87
	F. B. Lemon	99	68
	E. Lycett	1	08
	W. A. Linton	1	28
	J. Merton	157	53
	E. P. Miller	62	18
	M. A. Conner	2	00
	H. McCormick, (private,)		33
	A. O. P. Nicholson	5,159	63
70	S. Parker	9	40
	S. M. Powell	8	37
	J. F. K. Plant	1	34
	W. M. Perry	15	95
	J. L. Peabody	68	55
	E. N. Roach	11	94
	W. W. Russell	463	83
	R. E. Stevens	35	88
	W. Stickney	4	95
	C. Stott		48
	B. O. Sheckell & Co.	2,579	42
	C. Stott & Co		02
	B. J. Semmes & Bro	6	44
	Steavens & Co	1,404	47
	A. K. Smith	6	50
	B. Smith		56
	Suspense account	518	09
	T. Thompson		50
	J. Towles	2	62
	Ben. Tucker	201	28
	G. L. Thompson	174	89

D. Walker	236 72
White & Sons	17 54
71 R. H. Weightman	29 32
A. Wylie	419 61
F. Wilet	370 00
C. S. Walloch, (attorney,)	5 25
Yerby, Tebbs & Yerby	760 84
G. W. C. Whitney	4,779 47
W. H. Ward, (treasurer,)	39
White & Bro	1 75
J. R. Wallace	90 00
E. F. Buckingham	5 21
	$71,710 70

NOTES AND BILLS DISCOUNTED BY SELDEN, WITHERS & CO., WITH THE DATE OF MATURING.

Sturges & Ellis, November 20th, 1854	5,000 00
Sturges & Ellis, November 15th	5,000 00
G. T. M. Davis, November 4th	25 00
J. Puycee and others, July 23d	303 00
W. S. Tuckerman, November 30	325 50
Check & Miller, do.	2,500 00
T. P. & M. Brown, do.	603 40
W. Handy, do.	30 17
Hamilton & Slack, do.	1,000 00
John Mills, do.	150 00
72 A. Holmead, December 1	200 00
E. Bennett, December 3	530 00
Hamilton & Slack, do.	1,000 00
Kramer, Work & Young, December 4	3,000 00
G. T. M. Davis, do.	25 00
W. Handy, do.	20 00
Charles Petitt, do.	1,525 00
W. Handy, December 5	202 13
T. P. & M. Brown, do.	324 34
J. J. Miller, December 6	402 38
P. D. Gates, do.	3,500 00
P. J. Steavens, December 7	500 00
Hamilton & Stack, do.	1,000 00
W. F. Hall, December 9	50 00
S. T. G. Morsell, do.	206 59
Hamilton & Stack, December 10	1,000 00
M. A. Dexter do.	175 74
J. D. Colmesnil, December 11	200 00
John S. Gallaher, do.	60 00
Samuel T. Shugert, December 12	121 28
Course, Snowden & Course, December 13	10,000 00
E. P. Miller, December 14	1,300 00
R. H. Gallaher, December 18	40 22
73 L. P. Bayne, December 26	6,000 00
A. T. Smith, treasurer, December 27	2,000 00
F. Coyle, December 31	1,400 00
Kramer, Work & Young, January 4th, 1855	3,000 00

G. T. M. Davis, do.	25 00
Stansbury & Co., do.	1,100 00
L. P. Bayne, do.	10,460 00
J. C. Lewis, January 5th	1,100 00
Bayne, Withers & Co., January 8th	18,400 00
A. Rothwell, do.	176 88
C. E. Mix, do.	500 00
Flanagan, Abell, & Co., do.	1,010 00
Corporation of Alexandria, January 9	20,613 33
H. McCormick, January 9, 1855	394 16
J. M. Mason, January 12	1,224 80
Check & Miller, January 13	4,000 00
Thomas Purcell, January 14	27 76
A. J. Huntingdon, January 15	25 00
S. Chilton, January 19	100 00
W. Leatch, January 22	900 00
G. T. M. Davis, February 4	25 00
Ball, Criss & Co., do.	1,000 00
C. M. Perry, February 19	29 08
74 A. Graham, February 21	1,400 00
Bayne, Withers & Co., February 23	18,499 41
Bayne & Withers, February 27	8,000 00
A. T. Smith, treasurer, February 28	2,000 00
G. T. M. Davis, March 4	25 00
Thomas Pursell, March 14	28 01
Corporation of Alexandria, Va., April 1	25,766 67
G. T. M. Davis, April 4	25 00
John W. Forney, April 11	3,538 00
Ball, Criss & Co., May 4	1,000 00
G. T. M. Davis, do.	28 80
Thomas Pursell, May 14	28 86
A. T. Smith, treasurer, May 28	2,155 00
Thomas Pursell, July 14	28 51
Thomas Pursell, September 14	28 76
Thomas Pursell, November 14	29 01
Thomas Pursell, January 14, 1856	29 26
Thomas Pursell, March 14	29 51
Thomas Pursell, May 14	29 76
Ann Smith, December 4, 1854	35 00
John Mills, December 7	150 00
Samuel C. Barney, December 23	301 70
R. C. Weightman, January 22, 1855	475 00
75 S. C. Robinson, February 15	330 00
Peter G. Washington, January 4	1,082 04
Ball, Criss & Co., August 4	1,000 00
Gideon M. Ayers, February 5	50 00
" January 4	50 00
" March 4	50 00
" April 4	50 00
" May 4	50 00
W. H. Shirley, July 4	1 75
John H. Steele, December 3	350 00
R. S. Armistead, March 9, 1853	150 00
A. C. Peachy, January 6	1,193 26
J. McVeigh, April 20	20 00
F. H. Warren, September 12	4,000 00

D. A. Baird, December 17	89	22
J. J. Miller, March 16	100	00
Samuel Clinton, February 4, 1854	251	42
R. L. Armistead, April 15	501	75
Thomas N. Latham, July 4	2,000	00
B. O. Sheckell & Co., July 6	4,000	00
R. W. Latham & Co., July 4	103,066	66
R. W. Latham, July 1	4,314	83
R. W. Latham, August 4	2,166	34
76 D. T. Disney, September 18	600	00
A. O. P. Nicholson, September 5	5,001	75
C. W. Carrigan, September 20	101	75
J. B. Stewart, September 5	1,874	93
A. Hyatt Smith, August 15	941	25
A. S. Sutton, August 19	27	00
G. H. Monsarratt & Co., October 4	3,001	50
J. S. Barbour, October 14	251	74
Kinney, Green & Co., October 20	3,001	75
G. H. Monsarrat & Co., November 15	3,001	38
G. T. M. Davis, October 4	25	00
R. N. Johnson, November 10	1,201	95
T. C. Severance, cashier, Nov. 14	20	75
Sturges & Ellis, Nov. 10	5,000	75
John S. Barbour, president, Nov. 2	10,000	00
" " " 4	10,000	00
P. B. Key, Nov. 4	301	70
G. L. Gordon, Nov. 3	300	00
R. M. Young, Nov. 12	75	00
R. W. Latham, Nov. 4	2,001	75
G. H. Monsarrat & Co., Sept. 4	3,001	88
William Grandin, do	500	00
A. J. Marshall, do	50	00
77 J. W. Forney, October 11	3,438	54
J. S. Edwards, on Mineral Bank of Maryland, November 7	427	00
R. C. Steavens, September 24	1,500	00
" November 15	800	00
George Walton, November 17	55	00
C. H. James, on Riggs & Co., Sept. 2	100	00
E. Harte, on McMichael & Bird, Aug. 4	21	62
J. D. Hoover, Nov. 26	1,007	42
	$358,451	04

STATEMENT OF CLAIMS IN THE HANDS OF VARIOUS ATTORNEYS, WITH INTEREST THEREON TO NOVEMBER 20TH, 1854.

F. B. Hayes, attorney:		
N. Hale, June 19, 1854	4,103	22
N. Hale, July 19, 1854	4,083	21
N. Hale, Aug. 19, 1854	3,048	03
	$11,234	46

H. Hopkins, attorney:

A. W. Thompson, February 27, 1854	$1,672 99

George P. Hamilton, attorney:

O'Connor, Brothers & Co., August 23, 1853	$1,087 06

78 John A. Kelley, attorney:

J. B. Floyd, January 23, 1853	$1,122 76

Thomas N. Latham, attorney:

James Brown, September 27, 1852	$905 09

E. J. Lee, attorney:

J. V. Hamktramack, March 3, 1852	2,327 58
J. K. White, September 16, 1852	307 32
J. V. Moore, October 2, 1852	1,130 16
Edward Home, April 9, 1853	2,193 00
	$5,958 06

Fayette M. Latham, attorney:

J. S. Barbour, July 6, 1853	$109 99

Jeremiah Dovel, attorney:

J. A. Corwin, August 8, 1853	$325 25

George Davis, attorney:

W. S. Ashe, February 10, 1853	$996 00

S. S. Thomas, attorney:

J. & Laura Reed, March 4, 1852	58 13
J. & Laura Reed, May 4, 1852	57 63
J. & Laura Reed, June 4, 1852	57 38
	$173 14

Worthington & Matthews, attorneys:

E. Fisher, May 13, 1852	347 25
J. H. Peters, December 27, 1851	234 80
	$582 05

79 Coleman Yellot, attorney:

A. E. Carroll, November 4, 1852	1,234 93
“ “ 4, 1852	346 90
G. Cassard, “ 1, 1852	121 55
	$1,703 38

W. M. Merrick, attorney:

John Lee, November 4, 1852	787 74
“ October 5, 1852	565 72
G. C. Washington, December 4, 1852	225 62
	$1,579 08

Hamilton Pope, attorney:

S. F. J. Frabue, October 3, 1854	2,018 27
“ November 2, 1854	2,509 50
W'm Tanner, president, Oct. 23, 1854	2,666 38
	$7,194 15

Riley & Muir, attorneys:

J. H. Stone, Ap'l 11, 1854	$105 19

Russell & Fitzhugh, attorneys:

T. S. Haymond, Dec. 6, 1851	200 40
S. Clemens, Ap'l 11, 1853	113 08
	$313 48

Brent & Kinger, attorneys:

A. Rust, Jan. 18, 1853	$3,420 98

80 **Albert Cardoza, attorney:**

Duff Green, May 1 1854	4,479 03
“ March 3	369 41
	$4,848 44

Conway & Herndon, attorneys:

H. L. Brooke, Aug. 10, 1854	$1,018 80

John A. Linton, attorney:

W. M. Overton, Sept. 22, 1851	96 75
“ Oct. 18	151 75
G. Rhodes, Sept. 23	202 10
B. F. Duval, Jan. 5, 1852	300 00
	750 60
Received on account of same	348 20
	402 40
Difference of interest to Nov. 20, 1854	110 26
	512 66
G. L. Thompson, May 15, 1851	1,818 21
“ “ 18,	384 57
“ “ 31,	304 07
“ July 9,	1,204 22

" do	603 30
" July 11,	302 32
" " 16,	1,200 67
	$6,250 02

81 Amount of claims in the hands of A. Wylie, attorney, per statement annexed	$20,577 53
Total amount of claims in the hands of various attorneys, with interest thereon to November 20, 1854	$71,177 87

CLAIMS IN HANDS OF A. WYLIE, ATTORNEY, FOR COLLECTION, AND INTEREST THEREON TO 20TH NOVEMBER, 1854.

E. J. Pendleton	116 68
Walker & Peck	448 26
D. Selden & Donn	488 23
M. E. Bronaugh	58 34
A. S. H. White	113 34
W. De Hass	144 32
J. C. Bowyer	255 29
R. Cochran	106 37
W. H. Shirley	27 41
"	27 29
"	81 88
"	27 17
Bill, J. H. Drury	52 48
A. H. McRae	61 75
82 A. H. McRae	56 75
C. Laurie	71 75
"	21 75
B. P. Ingraham	26 76
A. H. McRae	60 00
J. M. Austin	54 65
Davis & Garrett	163 72
"	324 45
C. W. Dennison	53 77
Robert Clarke	269 23
E. Haniman	321 35
J. Pettibone	1,414 00
"	745 62
Wall & Brown	288 29
W. Gadsby	436 75
L. Daysey	27 79
W. B. Hart	234 75
S. B. Hickcox	87 17
J. Thomas	56 25
W. B. Hart	109 83
"	56 22
B. L. Bogan	61 32
John S. Cunningham	439 22
83 S. S. Potts	315 31
E. Bacon	108 43
Wendell & Howe	96 77

E. Yulee, (balance)	1 75
K. H. Lambell	103 07
Walker & Peck	575 90
D. Rowland	809 63
A. W. Reynolds	165 38
William Bird	38 56
“	33 79
“	33 96
E. S. Tate	201 75
J. Casparis	268 51
George C. Whiting	160 51
“	55 20
“	55 26
C. E. Sherman	1,073 33
“	1,068 83
“	370 77
C. Wendell	1,082 24
“	820 19
C. E. Sherman	126 38
A. A. Nicholson	2,827 79
84 Thomas Pembet	76 34
T. B. Brown	412 39
E. Hughes	310 15
“	444 27
“	310 31
Yerby, Tebbs & Yerby	347 02
John A. Brereton	308 69
B. E. Green	563 66
Total amount of claims, with interest, to November 20, 1854, in the hands of A. Wylie, att'y	$20,577 53

The foregoing five half-sheets, comprise Schedule A, referred to in and made part of the annexed deed, executed by us.

JOHN WITHERS.
L. P. BAYNE.
G. W. CARLYLE WHITING.
R. W. LATHAM.

DISTRICT OF COLUMBIA,
County of Washington, ss :

We, Thomas C. Donn and Benjamin K. Morsell, justices of the
85 peace in and for said county and District aforesaid, do hereby certify that the foregoing schedule, consisting of five half-sheets, is the Schedule A, referred to in and made part of deed of trust as annexed, from John Withers, Lawrence P. Bayne, George W. Carlyle Whiting, and Robert W. Latham to John A. English and William Bayne, trustees, bearing date the 29th day of November, 1854, the Schedule being signed by said grantors, and attached to said deed by us, and acknowledged by said grantors as part thereof.

Given under our hands and seals.

THOMAS C. DONN, *J. P.* [SEAL.]
B. K. MORSELL, *J. P.* [SEAL.]

True copy. Test:

JOHN A. SMITH, *Clerk.*

COMPLAINANT'S EXHIBIT E.

C.—Deed of John Withers.

This deed, made this 24 day of January, in the year 1855, between John Withers, of the county of Alexandria and State of 86 Virginia, of the first part, and Willis P. Bocock and Andrew Wylie, parties of the second part, witnesseth that whereas the late firm of Selden, Withers & Co., of Washington, D. C., are indebted to the Commonwealth of Virginia, in a large balance, the amount not yet adjusted and ascertained, arising out of the transactions of that firm under their contracts with the board of public works of Virginia, and as agents appointed by said board to sell the bonds of said Commonwealth and to pay interest thereon;

And whereas certain members of said firm, including the said Withers, have by a deed bearing date the 29th November, 1854, and of record in the District of Columbia aforesaid, conveyed and assigned the assets of that firm to William Bayne and John A. English, trustees, to secure the debts due by said firm, including that due to the Commonwealth as aforesaid; and whereas the said John Withers as one of the members of said firm, is desirous, as far as he is able, to furnish to said 87 Commonwealth out of his private means sufficient security for any balance of its debt that may remain unsatisfied out of the social assets conveyed as aforesaid, and so to arrange that the said social assets may be saved from loss and sacrifice as much as possible: Now, therefore, in consideration of the premises and of the sum of one dollar to the said John Withers paid by the said parties of the second part, the receipt whereof he hereby acknowledges, he, the said John Withers, hath granted, bargained, and sold, aliened, assigned, and conveyed, and by these presents doth grant, bargain, and sell, alien, assign, and convey unto the said Willis P. Bocock and Andrew Wylie, the said paties of the second part, all the following real estate, lying and situate in the said county of Alexandria, State of Virginia, namely: All that certain lot or parcel of land in the city of Alexandria, Va., bounded and described as follows: Beginning at a point 24 feet from Patrick street, on the north side of King street; thence running north one hundred feet; thence east fifty-one feet, more or less, to the line 88 of S. S. Master's; thence north fifty-six and three-twelfths feet to Hugh C. Smith's line; thence west seventy-five feet to Patrick street; thence south one hundred and seventy-six feet and three-twelfths to King street, and thence east twenty-four feet to the place of beginning.

Also all that other lot or piece of land in the said city, beginning on the south side of King street, at a point one hundred and twenty-three and five-twel'ths feet east of Columbus street; thence east, with King street, thirty feet one and a half inches; thence south, parallel with Columbus street, one hundred and fifty-six and seven-tweal'ths feet; thence west, parallel with King street, thirty feet one and a half inches; and thence north, parallel with Columbus street, one hundred and fifty-six and seven-tweal'ths feet, to the place of beginning. Also all that other lot or piece of land in said city, being lot No. 10 in the plan thereof, beginning on the north side of King street, between Union and 89 Water streets, at the east line of the lot of land formerly conveyed by Robert Allison and wife to James Patton and David Finley, supposed to be sixty feet east of Water street; thence east, on King street, thirty feet; thence north, parallel with Water street, eighty-one feet to a thirty-feet alley; thence west on said alley, parallel with King street, thirty feet, and thence south, parallel with Water street, to the place of beginning.

Also all that other lot or piece of land in said city, fronting on the north side of King street, between Union and Water streets, thirty feet, and extending with same width eighty-one feet to the above-mentioned thirty-feet alley, adjoining on the west the corner lot and warehouse of the late Anthony C. Cazenove, and on the eastern side the lot last above described.

Also all that other piece or lot of land in said city, bounded by Alfred street on the east, by Patrick street on the west, by Pendleton street on the north, and by Oronoco street on the south, constituting one square of land, and containing two acres, more or less.

90 Also an undivided interest of one-half in and to all that acre or half square of land in said city, beginning on the north side of Princess street at the middle point of the square formed by Alfred and Patrick streets, running thence west, with Princess street, one hundred and twenty-three and five-twelfths feet, to the intersection of Princess and Patrick streets, the whole length of the square to Oronoco street; thence east, with Oronoco street, one hundred and twenty-three and five-twelfths feet to the middle of the square on the north side formed by Alfred and Patrick streets; and thence south through the said square three hundred and fifty-three and six-twelfths feet, to the place of beginning: Subject, nevertheless, to a deduction of about one-fourth part thereof, on the south side or end, heretofore sold and conveyed to the trustees of the Methodist Protestant Church of Alexandria.

Also all the undivided half of a ten-and-a-half acre lot on the borders of said city of Alexandria, and on the Washington road, beginning on the east side of the Georgetown road at the line of a
91 tract of land of Elisha C Dicks; thence binding on said road
south 5° east thirty-five poles to the corner of Baldwin Dade's purchase from Alexander; thence north 85° east forty-six poles; thence north 5° west thirty-five poles to the first-mentioned line of the land formerly of the said Elisha C. Dick; thence, along the same, south 85° west forty-eight poles to the place of beginning, being the same which was conveyed to Abner Flowerree and the said John Withers, from the executors of Anthony C. Cazenove, dec'd, by deed dated 3d March, 1853, recorded in said county, in liber O, No. 3, page 448:

To have and to hold the above-described lots or parcels of land and undivided interests aforesaid, respectively, with the buildings, improvements, rights, privileges, and appurtenances thereunto belonging, unto the said Willis P. Bocock and Andrew Wylie, and the survivor of them, and his heirs and assigns forever.

In trust, nevertheless, that the said parties of the second part, or in case of the death or refusal to act of one of them, then the other shall take and hold the property hereby conveyed, and every part
92 thereof, (excepting only the dwelling-house of the said John
Withers, at the corner of King and Patrick streets, which he is to be permitted to occupy, free of rent, until or unless the sale here hereafter referred to shall take place,) and out of the accruing rents and profits pay the proper expenses and costs of this trust, including a reasonable compensation to the trustees or trustee, as the case may be, and all taxes on the property, and to apply the residue to the debt aforesaid to the Commonwealth of Virginia, until a sale be made as hereafter provided.

And being thereunto required by the second auditor or other proper authority of the Commonwealth, shall cause all or any of the property hereby conveyed to be sold, after sixty days' notice by advertisement in some daily newspaper of the city of Alexandria aforesaid, and by personal notice to the said John Withers, his personal representatives or assigns, of the time, place, and terms of sale. The terms of sale, in every case, to be either for cash or on responsible credit, as the 93 same may be agreed upon between the said John Withers or his personal representatives or assigns, on the one part, and the said second auditor or other proper authority of the Commonwealth of Virginia; or failing such agreement, then on such terms as the trustees or acting trustee shall deem fair and consistent with the interest of all parties concerned. The proceeds of sale to be applied as hereinbefore directed for the rents and profits; and any excess of said proceeds, after fully paying off said debt, to be paid over to the said John Withers or his personal representatives. On collecting the purchase-money, the trustees or acting trustee to convey the title in and to the property sold to the purchasers.

In witness whereof the said John Withers hath hereunto set his hand and seal the day and year first above written.

(Signed and sealed) JOHN WITHERS. [SEAL.]

Witness—

JAMES A. ENGLISH.

94 The original, whereof the above is a copy, was acknowledged by Mr. Withers on the 29th January, 1855, at Alexandria, before James A. English, a justice of the peace, whose certificate in the usual form is attached to the deed.

The deed for the property at St. Louis is in the same form as the foregoing in all respects, except as to the property described, and in the notice of sale, which is required to be advertised in two daily newspapers of St. Louis, for the same period of 60 days. A description of the St. L*ew*is property, as contained in that deed, is herewith enclosed. That deed I sent on the 31st ult., directed to the county clerk, St. Louis, Missouri, with a line requesting him to acknowledge its receipt. Other attachments were threatened, and I did not want to delay it.

ANDREW WYLIE.

WASHINGTON, *Feb'y* 1, 1855.

Description of certain real estate in the county of St. Louis, Missouri, conveyed by John Withers to Willis P. Bocock and Andrew Wylie, in trust, by deed dated 24th January, 1855. 95

1. All the right, title, and interest of him, the said John Withers, whether legal or equitable, and whether divided or undivided, now owned by him, in and to all that tract of land situate and lying on the Bellefontaine road, containing, in all, 186.75 acres, more or less, inclusive of Gingras Creek, bounded on the north by lands owned or claimed by Col. John O. Fallon, on the east by the Mississippi River, on the south by lands owned or claimed by Dr. John G. Bryan, and on the west by the Bellefontaine road aforesaid, being the same of which an undivided third was conveyed to the said Withers by E. Carter Hutchinson and wife, by deed dated 9th January, 1849, and of record in said county of St. Louis.

2. Also one equal divided or undivided interest of one-third of the following lots or parcels of land in the county and State aforesaid, all in Clark & Dillion's addition to Bremen, of which addition a plan is re-

corded in the county of St. Louis aforesaid, viz: lots numbered 6, 7, 8, 15, 14, 13, and the southern half of lot 12 in block No. 1; lots 1,
96 2, 3, 9, 10, 11, 12, seven feet and two inches off the southern part
of lot No. 4, and seven feet ten inches off the northern part of lot 13, in block 3; lots 1, 2, 3, 9, 10, 11, 12, seven feet and two inches off the southern portion of lot 4, and seven feet ten inches off the northern portion of lot 13 in block 4. Also 107 feet ten inches off the southern portion of lot No. 5, fronting on First street; thence running back to Gingras Creek, to the east line of the tract of land on which said Clark and Dillon's addition was laid out, bounded north by Dillon street, east by said east line in Gingras Creek, south by   street, and west by First street—being the same lots or parcels of land whereof an undivided half was conveyed unto the said Withers by E. Carter Hutchinson and wife, by deed dated March 1, 1850, recorded in book No. 5, page 814, and whereof the said Withers hath since conveyed the one-third of said half to William Gregory.

3. Also all the right, title, and interest, legal or equitable, divided or undivided, of him, the said John Withers, of, in, and to all that
97 tract of land, situate and lying in the county and State aforesaid,
and lying in the "grand prairie common fields," and being United States survey No. 1296, containing 60 arpents, being one and one-half arpent on the east front line of said common fields in width, and running back west 40 arpents in township 35 north, range seven east of the fifth principal meridian, and bounded in pavi on the north by the United States survey No. 1253, known as the Picart tract, and on the south by survey No. 1461, known as the Rontier tract, being the same land whereof the one-fourth of an undivided half was conveyed unto the said John Withers by Lewis V. Bogy and wife, by deed dated 8th January, 1851, and whereof the one-third of the other undivided half was conveyed unto the said John Withers, by Daniel D. Page and wife, by deed dated March 1, 1851, both of record in the county aforesaid.

The foregoing is a copy of the description of certain interests in real estate conveyed as stated in the above caption. The residue of the deed was as described in a memorandum made by me at the foot of a
98 copy of Mr. Withers' deed to the same parties, for his property
in Alexandria, which copy, with the memorandum referred to, I gave to Sidney S. Baxter, esq., counsel for the State of Virginia, with a request that it be furnished to Mr. Bocock, the attorney general of Virginia, and joint trustee with me in both deeds.

ANDREW WYLIE.

WASHINGTON, *Feb'y* 2, 1855.

COMPLAINANT'S EXHIBIT F.

E.—*Arrangement about the Chesapeake and Ohio Canal bonds.*

WASHINGTON, *January* 25, 1855.

Messrs. JOHN A. ENGLISH and WILLIAM BAYNE,
Trustees of Selden, Withers & Co.:

The deed of trust executed by the undersigned to you, containing a provision that in the event of any arrangement being made with the board of public works of Virginia in relation to securing the debt
99 due the State of Virginia from our firm, within sixty   days
from the date of the said deed, that upon our call you should

deliver over to said board certain Chesapeake and Ohio Canal bonds, mentioned in said deed; and such an arrangement having been made, you are hereby authorized and required to deliver the following-described bonds, and interest on coupons, to said board of public works or their agent, to wit:

Bond No. 493		50,000 00	
494		50,000 00	
525		20,000 00	
526		10,000 00	
527		10,000 00	
			140,000 00
—known as special bonds, interest from January 1, 1852.			
Interest due thereon January 1, 1855		25,200 00	
Less amount credited		69 85	
			25,130 15
Preferred bonds of the Chesapeake and Ohio Canal Company, one parcel, amounting to		24,500 00	
Coupons attached, $2,730, other coupons, $1,680		4,410 00	
			28,910 00
Receipt James Adams, cashier Bank of Washington, dated 20th August, 1853, for preferred bonds of the C. & O. Canal Co.		20,000 00	
Coupons attached to same		2,400 00	
Coupons on hand		1,200 00	
			23,600 00
100 Preferred bonds of the C. & O. Canal Co., held as collateral security for R. W. Latham's debt to Selden, Withers & Co.		13,500 00	
Coupons attached	810 00		
separated	1,620 00		
		2,430 00	
			15,930 00
Preferred bonds of the Chesapeake and Ohio Canal Company, held as collateral security for L. P. Bayne's note to Selden, Withers & Co.		10,000 00	
Coupons		1,800 00	
			11,800 00
			$245,370 15

JNO. WITHERS.
R. W. LATHAM.
L. P. BAYNE.
G. W. CARLYLE WHITING.

Received of trustees of Selden, Withers & Co., this 26th day of January, 1855, Chesapeake and Ohio Canal Company bonds, coupons, &c., agreeably to the foregoing list, to be held as collateral security for the debt due from said firm to the State of Virginia. The said bonds are not to be disposed of by sale for the term of three years, from this date, unless the duly-authorized agents of the said State and the said

101 firm, or their duly-authorized attorney, shall agree to an earlier disposition.

The said board of public works, or the duly-authorized agents of the the State, shall have power and authority at the end of three years, as aforesaid, to sell said bonds at public auction, for cash, upon reasonable notice, and apply the proceeds to the debt aforesaid; or, if the said firm, or their attorney as aforesaid, shall agree, at private sale or upon credit.

The said board or the agents of the State, as aforesaid, shall have full power and authority to collect from said canal company all interest accrued or accruing upon said bonds and the principal thereof or to fund the back interest, as proposed by the company. The said board or the agents of the State, as aforesaid, shall at all times have full power and authority, in their discretion, to prosecute suit against said canal company for the recovery of said bonds, and all interest thereon, or any portion of them.

BOARD OF PUBLIC WORKS OF V'A,
By W. P. BOCOCK, *their Att'y.*

102 COMPLAINANT'S EXHIBIT G.

Board of Public Works State of V'a, in ac. with Selden, Withers & Co

1855.	Dr.		
Jan'y 1.	To am't of bonds, part of the advance of $600,000, settled by the Board of P. W. with Sturges....	111,000	
	Am't of the interest account against the same, rendered to B'd P. W., including the Jan'y, '55, coupons on the foregoing $111,000........	22,687 01	133,687 01
Jan'y "	To am't of bonds, part of the advance of $600,000 settled by the Board of P. W. with Atwood & Rebee........................	100,000	
	Am't of the interest against the same, rendered to B'd P. W., including the Jan'y, '55, coupons on on the foregoing $100,000.......	15,614	15,614
Jan'y 1.	This amount, charged in full of all commissions and compensations..........................		66,200 72
103	145 V'a State bonds, of $1,000 each, lost on steamer Arctic in the fall of 1854, in transitu from Geo. Peabody & Co., London, to S. W. & Co. These bonds, made about the balance due from Peabody & Co. to S. W. & Co., and the freight and insurance were charged by the former to the latter. S. W. & Co., if credited by them, will protect the State of Virginia from any claim by Peabody & Co.—the board of public works yielding up the order on Peabody & Co. for $108,500.		

Bonds from No. 4742 to 4748, both inclusive	$7,000	
" " 5461 " 5500	40,000	
" " 5501 " 5550	50,000	
" " 5651 " 5698	48,000	
	$145,000	
Coupons on same, due Jan'y 1, '55	4,350	
		149,350
Balance		$436,874 17
		$901,725 90

104

1855.	Cr.		
Jan'y 1.	By amount of Virginia 6 % coupon-bonds advanced under agency contracts and not paid for	600,000	
	Coupons on same, due 1 Jan'y, 1855.	18,000	
			618,000
Jan'y 1.	Balance on interest acc't since last interest settlement, being accrued interest on bonds paid for at par, per acc't board pub. w'ks	8,431 94	
	Less diff., as shown by books of S. W. & Co.	402 57	
			8,029 37
" "	Amount received for premiums		8,800
" "	Outstanding coupons to wit:		
	Whole amount which should have been paid by S. W. & Co. to 1 July, 1854, inclusive	950,340	
	Less am't paid & returned to Board P. W.	917,460	
			32,880
Jan'y 1.	Amount due on £75,000 sterling 5 % bonds, as per acc't		234,016 53
			$901,725 90
	Balance due board pub. w'ks, Ja'y 1, 1855		$436,874 17

105 COMPLAINANT'S EXHIBIT H.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, and G. W. Carlysle Whiting.

The summons in this action having been duly served personally upon Robert W. Latham, on the 29th day of March, 1856, and no copy of answer or demurrer having been served upon the plaintiff's attorneys by the said Latham, and the said summons having been duly served personally upon Lawrence P. Bayne, on the 31st day of March, 1856, and the said Bayne having answered, and the said summons having been duly served upon William Selden, John Withers, and G. W. Carlysle Whiting, by publication in pursuance of an order made on the 27th day of December, 1854, and the defendant Whiting having 106 appeared in the action, and no copy of an answer or demurrer having been served on the plaintiff's attorneys by the defendants Selden, Withers, or Whiting, and on application having been made at a special term of this court held on the 6th day of October, 1856, for the relief demanded in the complaint, and judgment having been taken for the plaintiffs, and a reference having been ordered to take the proof required by the statutes, and the referee having reported that there is due to the plaintiff from the defendants, the sum of four hundred and eighty-nine thousand seven hundred and seventy-seven dollars and eighty-eight cents, at the date of his report, to wit, on the 15th day of January, 1857: Now, on motion of Cummins, Alexander & Green, attorneys for the plaintiff, it is adjudged that the said the Board of Public Works of the State of Virginia, plaintiffs, recover of William Selden, John Withers, Robert W. Latham, Lawrence P. Bayne, and George W. Carlysle Whiting, the sum of four hundred and eighty-nine thousand seven hundred and seventy-seven dollars and eighty-eight cents, with 107 an allowance of one-half of one per cent. upon the amount recovered, and twelve thousand three hundred and sixty-two dollars and seventy-two cents costs and disbursements, amounting in all to the sum of five hundred and two thousand one hundred and forty dollars and sixty cents.

(A copy.)
[SEAL.] RICH'D B. CONNOLLY, *Clerk.*

Decree nisi.

And the said subpœna being returned executed on the defendants, John Withers, Andrew Wylie, John A. English, William Bayne, and Willis P. Bocock, and they failing to file their answers, it is ordered that unless they answer the plaintiff's bill according to law, the court will take the same for confessed and decree accordingly.

And the defendants William Selden, Lawrence P. Bayne, and Robert W. Latham not having entered their appearance and given 108 security according to the act of assembly, and the rules of this court, and it appearing by affidavit that they are not residents of this State, it is ordered that the said defendants appear within one month after due publication of this order, and do what is necessary to protect their interest in this suit, and that a copy of this order be forthwith inserted in the Alexandria Gazette, a newspaper published in the city of Alexandria, once a week for four successive weeks, and posted at the front door of the court-house of this county.

And at another day, to wit, at rules held in the clerk's office of Alexandria circuit court, on the first Monday in November, 1858, came the plaintiffs by counsel, and on the motion of said plaintiffs this cause is set for hearing as to the defendants John Withers, Andrew Wylie, William Bayne, John A. English, and Willis P. Bocock.

108½ And at another day, to wit, at rules held in the clerk's office of

Alexandria circuit court, on the first Monday in January, 1859, came the plaintiffs, by counsel, and on the motion of the said plaintiffs, this cause is set for hearing as to the defendants William Selden, L. P. Bayne, and Robert W. Latham.

And at another day, to wit, at rules held in the clerk's office of Alexandria circuit court on the first Monday in January, 1859, came the plaintiffs, by counsel, and sued out of the clerk's office of Alexandria circuit court an alias subpœna in chancery against the defendant George W. Carlysle Whiting, which said alias subpœna in chancery is in the words, to wit:

The Commonwealth of Virginia to the sheriff of Greenbriar County, greeting:

109 We command you as before to summon William Selden, John Withers, Lawrence P. Bayne, George W. Carlysle Whiting, Robert W. Latham, William Bayne, John A. English, Willis P. Bocock, and Andrew Wylie, to appear at the rules to be held in the clerk's office of our circuit court of the county of Alexandria, at the court-house of said county, on the first Monday in April next, to answer a bill in chancery exhibited against them in the said court by the Board of Public Works of Virginia, and unless they shall answer the said bill according to law, the court will take the same for confessed, and decree accordingly, and this they shall in no wise omit under the penalty of £100, and have then there this writ.

Witness Robert Alexander Sinclair, clerk of our circuit court, at the court-house aforesaid, this 7th day of March, 1859, and in the 83d year of the Commonwealth.

R. A. SINCLAIR.

(Endorsed:) "To be executed on the def't George W. Carlysle Whiting only.

"Teste:

"R. A. SINCLAIR, *Clerk.*"

Which being returned: Executed on the defendant George W. Carlysle Whiting.

110 And afterwards, to wit, at rules held in the clerk's office of the circuit court, on the first Monday in April, 1859, came the plaintiffs, by counsel, and the said defendant, George W. Carlysle Whiting, failing to file his answer, it is ordered that unless the said defendant shall answer the plaintiff's bill according to law, the court will take the same for confessed and decree accordingly.

And at another day, to wit, at rules held in the clerk's office of Alexandria circuit court, on the first Monday in May, 1859, came the plaintiffs. This cause is set for hearing as to the defendant George W. Carlysle Whiting.

And at another day, to wit, at a circuit court continued and held for Alexandria County, on the 26th day of November, 1859—

111 It appearing to the satisfaction of the court that the complainants have proceeded in the mode prescribed by law to mature their cause for hearing as to the non-resident defendants, this cause then came on this day to be heard as to them, by virtue of said

proceedings; and as to the defendants John Withers, G. W. Carlyle Whiting, and English and Bayne, trustees, on the demurrers of said defendants to the complainant's bill. On consideration whereof the court orders and decrees that said demurrer be overruled, and that said defendants answer said complainant's bill. And thereupon the said defendant John Withers asked leave to file his answer to the said bill, and tendered the same, which being seen and inspected by the counsel of the complainants, the filing thereof was objected to as evasive and insufficient, and the objection thereto stated in writing and filed amongst the papers in this cause, in the form of exceptions; and the court being of opinion that the third, fourth, sixth, and seventh objections to the fileing of the said answer are well taken, and that the said answer is
evasive, overrules the motion of the said defendant, Withers, ask-
112 ing leave to file the same; and the said defendant failing to file
any other answer to the complainant's bill, the same is taken for confessed. And the court being of opinion that it will be proper to order accounts in the cause, and without now deciding the questions which may be raised by the pleadings or proofs hereafter to be taken, but reserving them for decision upon the comeing in of the report of the commissioner, doth adjudge, order, and decree, that a master commissioner of this court do proceed to ascertain and report the following matters of account:

1. What amount is due upon a settlement of the accounts between the complainants and the late firm of Selden, Withers & Co., referred to in the bill and proceedings in this cause.

2. What balance, if any, is in the hands of the defendants English & Bayne, trustees under the deed of trust of November 29, 1854, from
Selden, Withers & Co. to them; what assets conveyed to them
113 by the said deed of trust of November 29th, 1854, from Selden,
Withers & Co. to them; what assets conveyed to them by the said deed of trust remain uncollected, the character and marketable value of such assets, and the probable amount which will be realized from the same; but in stating said account, the said commissioner is not required to settle such accounts as may have already been settled by said trustees under the proceedings in the suit pending in the circuit court of the United States for the District of Columbia, in the name of The United States vs. Selden, Withers & Co., & others, but taking such accounts so settled as correct, shall state and settle so much only of the accounts of the said trustees as has not heretofore been settled by them in the said suit; and the said commissioner is authorized, in settling said account, to summon the parties to appear before him, and to examine them upon oath, touching all matters pertinent to the accounts
hereby required to be taken and stated by him, and to state such
114 matters as to him may seem pertinent, or any of the parties may
require. And it further appearing to the court that the bonds of the Chesapeake & Ohio Canal Company, mentioned and described in Exhibit F, filed by the complainants, and delivered to W. P. Bocock, late attorney general of the State of Virginia, as counsel of the complainants, are still unsold, and that the time limited by the agreement between the complainants and the said Selden, Withers & Company within which they were not to be sold, has expired, it is further ordered and decreed that John Randolph Tucker and Robert E. Scott, hereby appointed commissioners for the purpose, do proceed to sell at public auction the said bonds upon the following terms, that is to say, so many of the said bonds as will produce the sum of five thousand dollars cash; and the residue of said bonds in such parcels as to said commis-

sioners may seem judicious, upon a credit of six months, taking therefor the negotiable notes of the purchasers, with an approved endorser; but before proceeding to execute this decree, the said commissioners
115 are required to enter into bond in the penalty of ten thousand dollars, conditioned as the law requires, for the faithful performance of their duty under this decree, and shall give not less than sixty days' notice of the time, place, and terms of sale, by advertisement in the New York Herald, the National Intelligencer, and Richmond Enquirer, or some other newspapers published in the city of New York, the city of Washington, and the city of Richmond, and the said commissioners are hereby ordered and required to bring the cash received and the notes taken by them as aforesaid upon the said sales into court, and report their proceedings under this decree to the next term of the court.

The demurrer of John Withers to the bill of complaint of the Board of Public Works of the State of Virginia, exhibited against him and others in the circuit court of Alexandria County.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint
116 contained to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for cause of demurrer sheweth that the complainant hath not by his said bill made such a case as entitle' them in a court of equity to any discovery or relief from or against this defendant touching the matters contained in the said bill, or any of them. Whereupon, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill, and to all the things therein contained, and prays the judgment of the court whether he shall be compelled to make any further or other answer to the said bill. And he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

R. E. SCOTT, *For Def't.*

George W. C. Whiting, a defendant in the above-entitled cause,
117 by Samuel Chilton, his attorney, says the bill of complainants filed therein is not sufficient in law, and he doth demur thereto.

GEORGE W. C. WHITING,
By SAM'L CHILTON, *Att'y.*

John A. English and William Bayne, trustees of Selden, Withers & Co., defendants in the above-entitled cause, by Samuel Chilton, their attorney, say that the bill of complainants filed therein *are* not sufficient in law, and do demur thereto.

JOHN A. ENGLISH,
WILLIAM BAYNE,
Trustees, &c.
By SAM'L CHILTON, *Att'y.*

The separate answer of John Withers to the bill of complaint of the Board of Public Works of Virginia, exhibited against him and others, in the circuit court of Alexandria County.

118 This respondent, saving to himself the benefit of all exception to the errors, uncertainties, and imperfections of the said bill of

complaint, for answer thereto, or to so much thereof as he is advised it is material for him to answer to, answering, saith:

That it is true that in the month of October, 1850, or thereabouts, this repondent, with William Selden, Lawrence P. Bayne, and Robert W. Latham, entered into a copartnership *of* for banking and exchange in the city of Washington, and for other purposes; that it is also true that, in the month of June, or thereabouts, of the year 1852, the said William Selden, upon certain terms, not necessary herein now to be explained, with the assent of his copartners, sold his interest in the copartnership, to George W. Carlyle Whiting, but agreed to permit his name to be used in the transactions of the firm as before; after which time the said Whiting became, in the place of the said Selden a member of the firm. The original name of the firm was Selden, With-
119 ers & Co., and no change was made in the firm-name after this
change in the members of the firm.

It is true that, about the 7th of Nov., 1854, the firm becoming embarrassed in its business, went into liquidation, and the members thereof, by their deed of the 29th day of the same month conveyed to John A. English and William Bayne, a large amount of property belonging to the firm, upon certain trusts in their said deed contained, preferring their creditors according to classes, and postponing the State of Virginia to the last class. Whether the Complainant's Exhibit D contains a true copy of the said deed this respondent is unable to say, and he calls for proof thereof. He presumes that the said deed was duly recorded, and a certified copy thereof can be obtained.

This respondent will here explain that at the time of the constitution of the firm, he was very far advanced in years, and of infirm health, insomuch that he had for a considerable time prior thereto withdrawn
from the pursuits of active business, and never participated in
120 the management of the concern, but trusted all things to his part-
ners. He did not reside in the city of Washington, where the house was established and the business conducted, and possessed but little acquaintance with the details of affairs, and consequently cannot answer specifically to many of the interrogatories of the bill.

This respondent has been informed that, during the years 1851, 1852, and 1853, sundry contracts were entered into by the complainants, and the firm of Selden, Withers & Co., touching the bonds of the State of Virginia to very large amounts. The first contract was for the sale of bonds of the State to the amount of $4,000,000. Previous to the contract the bonds of the State were considerably below par in the markets, but by the management of the firm premiums under this contract were paid to the State amounting to $60,000. In the year 1852, the State sold to the firm a number of its bonds, amounting to $1,000,000, for which a premium of 8 per cent. was paid, making $80,000. In May, 1853,
another contract was entered into, by which the firm sold for the
121 State bonds amounting to $1,500,000, and paid to the State
$23,420 in premiums thereon. As already stated, this respondent has no knowledge of these matters, but he states them upon the information of others.

He has been informed that, afterwards, and in the same year, still another contract was entered into for the sale of other bonds of the State, amounting probably to $6,000,000; but this respondent cannot say whether the Complainants' Exh'b't A contains a true copy thereof, and if it be material to this case, he requires strict proof of the same. Under this contract he has been informed that the firm received from the complainants, from time to time, bonds of the State to large amounts, and, from time to time, paid to the complainants large sums of money on account thereof, but whether the Complainants' Exh'b'ts B & C contain true statements of the bonds delivered, and of the remittances made, this respondent cannot say, and if the same are necessary for this case, he calls for strict proof thereof.

This respondent, further answering, saith that the amount of
122 assets conveyed to the trustees, as he is informed, greatly exceeded the amount of indebtedness charged upon them, and he hoped that under judicious management they would be equal to the satisfaction of the demands of the creditors of every class; but to satisfy the complainant, and further to secure the payment of whatever sum of money might be ultimately due, this respondent executed to Willis P. Bocock and Andrew Wylie, the deed of the 24th day of Jan'y, mentioned and in part recited in complainant's bill and other deeds of the same date, whereby he pledged his individual property, estimated to be worth not less than $200,000, to pay whatever part of complainant's debt might remain unsatisfied out of the social effects, when the trust aforesaid touching them should be executed. Besides which this respondent, since the failure of the firm, has paid out of his individual means debts of the firm, having priority over that of the complainant by the terms of the said deed, equal to $140,000, increasing by that much the assets in the hands of the trustees applicable to the
123 debt of the complainants. This respondent, therefore, ought not to be charged, as complainant does charge him, with a refusal or unwillingness to comply with every obligation which, in justice and good conscience, he owes to the State, and he submits on this point the following extract from the annual report of the complainant, made to the legislature in 1855:

"It is due to Mr. Withers, the member possessing the largest estate, to say that on this occasion his conduct indicated an appreciation of his personal obligations, and a desire not only to protect the State, but by a judicious disposition of his property to avoid unnecessary expense and loss to himself and partners. In this spirit he conveyed to Willis P. Bocock and Andrew J. Wylie, in trust for the benefit of the State, a large amount of valuable real estate, located in the cities of Alexandria, Virginia; and St. Louis, Missouri."

These deeds were made under assurances given by the attorney general of the State, and by members of the complainant's board, that no adverse proceedings should be prosecuted at law against the firm,
124 and that Mr. Selden should be required to give security for the said debt on his individual property to an amount not less than $50,000, or on his failure so to do he should be sued in the District of Columbia, where he resided. Neither of these assurances have been complied with. The said Selden furnished no security on his part, and now by the omission to issue process against him the complainant is barred as to him in any suit on the contract by the statute of limitations in force in the jurisdiction in which he resides; but proceedings at law in the State of New York at the instance and in the name of complainants were prosecuted against the said firm.

This respondent has no personal knowledge of the attempts at settlement made by complainant through the said Willis P. Bocock, or other counsel, and he knows nothing personally of the credit or debit side of the account, nor of the items proper to be entered into either, nor does he know what balance is justly due. Shortly after the failure of the firm he was informed that the balance probably due to the com-
125 plainant, under the last contract, would be greatly less than that

claimed in the bill, and for which judgment was obtained in the courts of New York.

This respondent files herewith a certified copy of a record of the proceeding in that State, and prays that the same may be taken as a part of this answer. It is marked (T.) From this it will be seen that the complainants, on the 27th day of Dec., 1854, impleaded the members of the firm of Selden, Withers & Co., in the supreme court of the county of New York, in an action at law founded on the contract now sued on in this case, for the same causes of action in the said bill set forth, and in the said action, according to the practice and procedure in that State, then in force therein; and upon the said cause of action recovered judgment for the sum of $502,140.60. At the date of the said action this respondent was, as he still is, a citizen of this State, residing in the city of Alexandria, and no process in the action was served on him, nor did he appear to the action. He was not within the limits of the
126 State of New York, nor subject to the jurisdiction of the supreme court of the county of New York, and he is advised that the said judgment has therefore no legal validity against him. But the said Lawrence P. Bayne, George W. Carlyle Whiting, and Robert W. Latham, other members of the firm, were present therein, either in person or by attorney, were served with process in and appeared to the action, and as to them the said court had jurisdiction both as to persons and the cause of action. Therefore, inasmuch as the said supreme court of the county of New York was a court of record, of competent jurisdiction, having authority over the parties and the cause of action, according to the laws of the State of New York then in force, the said judgment was final and conclusive between the parties as to the matters in that action in controversy between them, and forever extinguished in a higher security the causes of action in that suit; and this respondent is advised that the same effect is to be given to the said judgment in the courts
127 of this State. The remedy of the complainant is, therefore, on the said judgment, and neither this respondent nor the other members of the firm can be again vexed by another suit on the contract so extinguished. And this respondent prays that he may have the same benefit of this defence by way of answer, as if he had formally pleaded the same.

This respondent, further answering, says that he does not know whether any, and if any what, sum was realized under the said judgment; but he has been informed and believes that the unnecessary and ill-advised proceedings in that case cast a loss on the firm of a sum of money not short of $80,000. One of the objects of the suit was by the auxilliary process of attachment therein to get possession of a large number of the bonds of the State, hypothecated by the firm as security for certain loans of money, in denial of the title of the holders thereof. The effect of this proceeding, and the rumors springing from the presence, conversations, and doings of the complainant and its agents in the city of New York, was to create alarm among the creditors of the
128 firm who held the bonds, and caused them to hurry the said bonds for sale upon a depressed market under the most disadvantageous circumstances. In a chancery suit now pending in the circuit court of the District of Columbia, wherein the complainant, in the name of the State of Virginia, has appeared as a party, and which arose upon a creditor's bill for the execution of the trusts declared by the aforesaid deed to English and Bayne, the auditor of that court has estimated the loss thus occasioned at from $170,000 to $180,000. And yet speaking of this hypothecation the complainant said, in a report made to the legis-

lature in January, 1856, that the bonds thus hypothecated had not been placed into the hands of the firm until after they had paid to the board the full value thereof. This respondent, therefore, claims that inasmuch as this serious loss has been visited on the firm by the aforesaid unwarranted claim of the complainant, when the holders of the bonds, had their titles remained unquestioned, would have held them for a better market, that in any just settlement that may be made of these
129 matters he or the firm ought to be credited by the said loss.

This respondent, further answering, says that by the terms of the deeds to Bocock and Wylie, the property therein conveyed is not subject to sale until the trusts of the deed to English and Bayne are fully executed, and that it is unnecessary to vex the parties with a suit for the settlement of the said trusts in this court, because, in the suit aforesaid in the District of Columbia, this object is in process of being obtained. Numerous audits have already been made in that suit; the claims of creditors adjudicated, and large sums of money paid by the trustees pursuant to the order of the court. The manuscript is exceedingly voluminous, and many vouchers and papers have been filed in the case which cannot be withdrawn, and which will be absolutely necessary for any settlement to be made by order of this court. Under some of these decrees, the complainant has received, at sundry times, large sums of money out of the social effects, in part, of its demand. When the firm of Selden, Withers & Co. entered into the first contract
130 with the complainant for the sale of the bonds of the State, those securities were greatly below par in the markets, and it was solely by the exertions of the firm that they for a time were sold at a premium, and the complainant received, in the form of premiums, the considerable sum of $163,420. Encouraged by the first success, the firm was induced to embark in the further contracts, and when they were in the active negotiation of large transactions, with every prospect of pushing them to successful issues, a report made by the finance committee of the senate, was seized upon by the bears of the stock exchange, and so employed in their interest, that these securities fell in the markets, and heavy losses were sustained by the firm. These considerations and others seem to this respondendent to make inequitable to pursue him individually upon these transactions, and he feels justified in invoking every defence of the law. If the complainant will be satisfied to abide by the clear understanding, and await the settlement of the trusts
131 of the deed now in process of settlement, and avail itself of the security of the bonds of the Chesapeake and Ohio Canal Company, already under its control, it will be found that ample security has been provided for the full satisfaction of all that is justly due, and that no necessity will exist for the Commonwealth to pursue the individual property of this respondent. This respondent knows nothing of the statement contained in complainant's Exhibit G, and he cannot say whether the Exh'b'ts E and F are or are not true copies of the deed and agreement of which they purport to be copies.

JNO. WITHERS.

The people of the State ot New York, by the grace of God free and independent, to all whom these presents shall come or may concern, greeting:

Know ye that we, having inspected the records and files in the
132 office of the clerk of the city and county of New York, and clerk of the supreme court of said State for said county, do find a cer-

[SEAL.] tain judgment-roll on file there remaining, which is in the words and figures following, to wit:

Affidavit of service of summons and complaint.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of New York *against* WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, & other defendants.

CITY & COUNTY OF NEW YORK, *ss:*

James Marriner, being duly sworn, says that on the 29th day of March, 1856, at No. 2 Wall st., city of New York, he served a copy of the annexed summons on Robert W. Latham, and on the 31st day of March, at cor. of Wall & Broadway, also personally served Lawrence P. Bayne, also one of the within-named defendants in this action, by delivering the same to such defendant personally, and leaving the same with .

133 He further says that he knew the person served as aforesaid to be the person mentioned and described in said summons as defendant therein.

JAMES MARRINER.

Sworn to before me this first day of April, 1856.

W'M DIXEY,
Com'r of Deeds.

Summons.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia *against* WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, & G. W. Carlyle Whiting.

To the defendants:

You are hereby summoned and required to answer the complaint in this action, which was this day filed in the office of the clerk of the city and county of New York, at the city hall in said city, and to
134 serve a copy of your answer to the said complaint on the subscribers at their office, number 19 Wall street, in said city, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will apply to the court for the relief demanded in the complaint.

Dated December 27th, 1854.

CUMMINS, ALEXANDER & GREEN,
Plaintiff's Attorneys, 19 *Wall street*, *N. Y.*

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, & G. W. Carlyle Whiting.

The Board of Public Works of the State of Virginia, plaintiffs in this
action, by Cummins, Alexander & Green, their attorneys, com-
135 plain of William Selden, John Withers, Robert W. Latham, Law-
rence P. Bayne, and G. W. Carlyle Whiting, defendants therein,
and show to the court—

1. That the plaintiffs are and were, at the times hereinafter mentioned,
under and by virtue of the laws of the State of Virginia, a corporation
capable of su'ing and being sued, and authorized among other powers, to
borrow on the credit of the State of Virginia, from time to time, such
sums of money as might be needed to redeem certain engagements of
the said State; that in order to this it was further authorized as afore-
said to direct certificates for money, (signed by the second auditor of
the State sealed with the seal of the State, made payable to the holder
thereof, purporting that the principal will by payable by the Common-
wealth of Virginia at a day named therein, not more than thirty-four years
from the date of the certificate, and with coupons of interest attached,) to
be issued by the treasurer before the payment of the money therein
136 mentioned, and to be delivered according to the order of the said
board of public works, the plaintiffs in this action.

That the said board of public works were, at the time hereinafter mentioned, under and by virtue of the laws of the State of Virginia, further authorized to employ agents in respect to the money to be borrowed as aforesaid, which borrowing was to be at a rate of interest not exceeding six per cent. per annum, and no such certificate as is above mentioned was to be sold for less than the sum appearing on its face, to be owing from the State of Virginia, if the rate of interest stipulated to be paid thereon should be six per cent. or more, but if the rate of interest should be less than six per cent. per annum, such certificates should not be sold for a sum less than that which at six per cent. per annum would make an interest equal to that stipulated to be paid thereon.

2. That the defendants were, on the 9th day of July, 1853, and from
that time until the 29th day of November, 1854, partners trading
137 under the name, firm, and style of Selden, Withers and Com-
pany, and that in accordance with the powers hereinafter men-
tioned, and by virtue thereof, the said plaintiffs entered into a contract
with the said defendants as such partners, by the name of Selden,
Withers & Company, to be the agents of the plaintiffs in respect to the
sales of the certificates of the debt of the State of Virginia, herein-
before mentioned, a copy of which contract is annexed to this complaint,
marked Schedule A, and made part thereof, which contract was not at
any time thereafter altered in any respect, except that at the request of
the defendants, the amount of bonds to be put into the hands of the
defendants, as mentioned in the seventh section of the said contract of
the 9th day of July, 1853, was on the 6th day of December, 1853, in-

creased by an order of the said board of public works, from the sum of five hundred thousand dollars to the sum of six hundred thousand dollars.

138 3. That the said agency of the defendants was, on the 25th day
of November, 1854, terminated by order of the plaintiffs upon
the defendants declaring themselves insolvent, and notice thereof was
given accordingly.

4. That, in accordance with the said agreement, certificates of indebtedness aforesaid of the State of Virginia were delivered by the plaintiffs to the defendants, as agents, amounting in the aggregate to five millions five hundred and fifty-seven thousand dollars, and seventy-five thousand pounds sterling.

5. That the said defendants, as partners and agents aforesaid, from the said 9th day of July, 1853, to the time of the commencement of this action, were in receipt of divers large sums of money on account of their said agency, a part of which said sums of money the said defendants still retain in their possession and unaccounted for.

6. That since the termination of the said agency, application has been
made by the plaintiffs to the defendants for an accounting to the
139 said plaintiffs in respect to said bonds and all moneys received
by said defendants on account of said plaintiffs, and for a return
of all bonds received and not sold; that said defendants, thereupon, on the 20th day of November, 1854, furnished a statement by which they showed that there was in their hands, by reason of their said agency, as of that day, the amount of eight hundred and seventy-five thousand four hundred and thirty-nine dollars and eight cents, ($875,439.08,) against which they set items to a large amount, some of which are un'telligible to the plaintiffs, and to explain which the said defendants have neglected and refused, though often requested, and others are of a character which may or may not hereafter be applicable in whole or in part, and refer rather to what may, by some possibility, be hereafter recovered by the plaintiffs from others, than to any present right of the defendants to claim the said last-mentioned items as a credit.

Yet, the plaintiffs respectfully show to the court, that after all
140 these items, as stated by the defendants, are deducted from the
amount with which the defendants have charged themselves, there
remains, by the admission of the said defendants as contained in the said statement, due from the said defendants, as agents aforesaid, to the said plaintiffs the sum of three hundred and thirty thousand nine hundred and thirty-nine dollars and eight cents, ($330,939.08.)

7. That demand has been made of the said defendants since the said 25th day of November, 1854, that they should account to the plaintiffs and pay over the sum now due and owing to the plaintiffs by the defendants, and deliver over to the plaintiffs the bonds not accounted for, yet, the said defendants have not rendered a just and reasonable or other account of the moneys so received by the defendants as aforesaid, nor have they delivered to the plaintiffs the bonds not accounted for, but so to do have neglected and refused, and still do neglect and refuse.

8. That in consequence of such neglect and refusal on the part of the
defendants so to account, the plaintiffs are unable to state with
141 accuracy the amount of money received by the said defendants
upon their said agency and not accounted for or paid over to the
defendants, but the plaintiffs charge that the same exceeds the sum of three hundred and thirty thousand nine hundred and thirty-nine dollars and eight cents, as stated by the defendants in their said accounts.

Wherefore the plaintiffs pray judgment for an account and payment for the amount due to them and a delivery of all the bonds in the hands of the defendants or under their control, and for such further or other relief as the plaintiffs may be entitled to.

CUMMINS, ALEXANDER & GREEN,
Plaintiffs' Attorneys, No. 19 Wall street, N. Y.

SCHEDULE A.

This agreement witnesseth that the board of public works of
142 Virginia, having occasion to borrow money upon the credit of the
State, have appointed Selden, Withers & Co., of the city of Washington, their agent to make sale of coupon-bonds of the said State to the amount of six millions of dollars on the terms herein set forth:

1. Selden, Withers & Co. are to determine whether the bonds to be sold under this contract shall be six-per-cent coupon-bonds as heretofore issued by the board of public works or five-per-cent. sterling coupon-bonds.

2. The engraving of the bonds to be sold under this contract shall be executed under the direction of Selden, Withers & Co. at the expense of the State.

3. The principal and interest of the said bonds shall be made payable in the city of New York or London as may be determined between Selden, Withers & Co. and the parties that may purchase the bonds.

4. The price at which the bonds shall be sold is to be regulated by Selden, Withers & Co., with this exception, that no bonds shall be sold
under this contract at a price below their par value, without the
143 special direction and authority of the board of public works,
but said board hereby reserves to itself the right to fix a higher minimum price whenever they may think proper before a sale.

5. Selden, Withers & Co. are to pay all the expenses of carrying into effect their agency created by this agreement and in full satisfaction of all expense and trouble of said agency are to have a commission of one per cent. on the gross amount of their sales.

6. The gross money raised by each sale for principal, interest, and premium, less their commission of one per cent. as aforesaid, they shall, in a reasonable time after the sale, pay over to the board.

7. In order to furnish Selden, Withers & Co. all the facilities for availing themselves of opportunities to sell at the highest prices, the board will from time to time place in their hands ahead of sales, bonds to be sold under this contract not exceeding in amount five hundred
thousand dollars, and in order to save the board from the neces-
144 sity at any time of causing forced sales, and of reducing the price
of the bonds below their par value in order to effect such sales, Selden, Withers & Co. agree that if the board shall at any time be in present want of funds before sales have been made, they will, if required, advance to the board, from time to time, such amounts as may be necessary to meet the demands upon the board over and above sales previously made, and in anticipation of sales thereafter to be made upon the receipt of bonds to that amount, any such advancement to be reimbursed to them out of such after sales with interest at the rate of six per cent. per annum.

8. All payments to the board of public works under this agreement to be made as heretofore, namely, by depositing the money in one of the banks at Richmond to the credit of said board.

9. During the existence of this agency, which shall continue till it is fully executed or till the board shall see cause to terminate it for infi-

145 delity or suspicion of infidelity on the part of their said agent, the board will not appoint another agent to sell coupon-bonds, nor sell such bonds to other persons without first conferring with Selden, Withers & Co.

10. It is further agreed between the parties that to the extent of the issue of bonds made payable in New York semi-annually, and not less than fifteen days before the interest thereon shall fall due, and to the extent of the issue of the bonds made payable in London semi-annually, and not less than sixty days before the interest thereon shall fall due, there shall be placed in one of the banks of the city of Richmond to the credit of Selden, Withers & Co., in specie funds, an amount equal to the said semi-annual interest, and Selden, Withers & Co., in consideration thereof, are faithfully to pay the said interest in the city of New York and in London when due. But the board of public works shall have the right at any time, with or without cause, to withdraw and terminate this agency for paying interest as aforesaid and to refuse to make the deposit for that purpose.

146 Finally. It is agreed between the parties that the board of public works shall have the benefit of the exchange between the United States and Europe on all bonds sold under this contract in the latter country, which exchange is to be accounted for by Selden, Withers & Co. as a part of the gross amount of sales upon which they are to receive a commission of one per cent. as aforesaid.

In witness of all which Archibald Graham, the president of the board of public works, & Selden, Withers & Co. have hereunto set their hands this ninth day of July, A. D. 1853.

ARCH'D GRAHAM,
Pres. Board Pub. Works.
SELDEN, WITHERS & CO.

Affidavit.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, & G. W. Carlyle Whiting.

147 CITY AND COUNTY OF NEW YORK, *ss:*

WILLIAM R. DRINKARD, of the city of Richmond, and State of Virginia, being duly sworn, says that he is the secretary of the board of public works of the State of Virginia; that the said board of public works, under and by virtue of the statutes of that State, is a public corporation, authorized to borrow money on the credit of the State to redeem certain engagements of the State, and to effect those loans, may cause bonds of the State duly executed, and with semi-annual coupons of interest attached to be issued and delivered according to the order of the board, previously to the payment of the money in said bonds specified, namely, for sale, and to employ agents in respect to loans thus to be negotiated; that the firm of Selden, Withers & Company were, during the year eighteen hundred and fifty-three, and up to the twenty-fifth day of November, eighteen hundred and fifty-four, agents of the board of public works for the sale of bonds of the State, and for paying

148 interest thereon as it fell due; that the firm of Selden, Withers & Company consisted of William Selden, who resides at the city of Washington, in the District of Columbia; John Withers, who resides at Alexandria, in the State of Virginia; Lawrence P. Bayne, who resides at Alexandria, in the State of Virginia; Robert W. Latham, who resides in the city of Washington, and District of Columbia; and G. W. C. Whiting, who resided at the city of Washington, and District of Columbia, until within a few days past, but whether he now resides in said said city, or in the State of Virginia, this deponent does not know; that none of the said firm are residents of the State of New York.

And this deponent further says that said firm of Selden, Withers & Company, during the time of their said agency, received very large amounts of the bonds of the State of Virginia to be sold by them as agents at not less than a fixed price, and large sums of money with which to pay the instalment of interest on the bonds sold; that since their 149 agency terminated, application has been made to the said firm for an accounting to the said board, in respect to said bonds and all moneys received by said firm on account of said board, and for a return of all bonds received and not sold; that said firm of Selden, Withers & Company thereupon, on the twentieth day of November, in the year eighteen hundred and fifty-four, furnished a statement, by which they showed that there was in their hands by reason of their said agency as of that day the amount of eight hundred and seventy-five thousand four hundred and thirty-nine dollars and eight cents ($875,439.08,) against which they set items to a large amount, some of which are un'telligible to the board, and others are of a character which may, or may not hereafter be applicable, in whole or in part, and seem to refer rather to what may by possibility be recovered by the board from others than to any present right of the said Selden, Withers & Company to a credit. Yet after all these as stated by them and deducted from the amount 150 against them, there remains, by their own showing in said statement due from them, a balance as of that day of three hundred and thirty thousand nine hundred and thirty-nine dollars and eight cents ($330,939.08.)

And deponent further says that the said board of public works of the State of Virginia are unable to state, with accuracy, the amount of moneys received by the said firm of Selden, Withers and Company upon their said agency, and unaccounted for to the said board by Selden, Withers & Company, but that the same exceeds the sum of three hundred and thirty thousand nine hundred and thirty-nine dollars and eight cents ($330,939.08,) shown by the statement of said Selden, Withers & Company above mentioned.

And deponent further says that demand has been made by the said board of public works for the payment to them by Selden, Withers & Co. of the moneys received and due by them upon the said agency; that the same has not been paid; that demand has also been 151 made upon the said firm for a return of all the bonds that have not been sold and accounted for, and that should be in their hands, but the same have not been returned. And it has come to the knowledge of the board, upon reliable information, that large portions of these bonds have been hypothecated, or otherwise disposed of, by said firm for their own uses, and there is good reason to suspect and believe that all the bonds unaccounted for have been converted by said firm to their own use, in violation of this contract; that said firm of Selden, Withers and Company have suspended payment, and have made an assignment.

And deponent further says that, under and by virtue of the laws of

the State of Virginia, the said board of public works are authorized to conduct all transactions regarding the sale of all bonds and other matters in which the said Selden, Withers and Company were employed, and the moneys now in the hands of and due from Selden, Withers
152 and Company be to and for the use of the said board of public works.

And deponent further says that the said firm of Selden, Withers and Company are possessed of property in the State of New York.

W. R. DRINKARD.

Sworn before me this 20th day of December, 1854.

JOHN BISSELL,
Com'r of Deeds.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, and G. W. Carlyle Whiting.

CITY AND COUNTY OF NEW YORK, *ss:*

ASHEL GREEN, of the city of New York, being duly sworn,
153 says that he is one of the attorneys of the board of public works of the State of Virginia; that neither of the defendants after due diligence can be found in the State of New York; that the only one of the defendants who has come to the knowledge of the attorneys of the plaintiffs as being in this State for the last ten days, was Lawrence P. Bayne, and that, upon making enquiries this day, this deponent was informed and verily believes that said Bayne had left the State, and that none of the defendants are now in the State.

ASHEL GREEN.

Sworn to before me this 20th day of December, 1854.

JOHN BISSELL,
Com'r of Deeds.

154 *Order of publication.*

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, and G. W. Carlysle Whiting.

It appearing to my satisfaction by affidavits that the above-named defendants, William Selden, John Withers, Robert W. Latham, Lawrence, P. Bayne, and G. W. Carlysle Whiting, are non-residents of this State, but have property therein, and that the action arises upon contract, and that the court has jurisdiction of the subject of the action; and that the above-named defendants, William Selden, John Withers, Robert W. Latham, Lawrence P. Bayne, and G. W. Carlysle Whiting cannot, after due diligence, be found within this State; and that a cause of action exists against the said defendants, I do hereby 155 order that the summons herein be printed in the city of New York, to wit, in the New York Herald and the New York Evening Post once a week for six weeks; and that copies of the summons and complaint in this action be forthwith deposited in the post-office in the city of New York, and that the postage be paid thereon, as follows: One copy of the summons and complaint to William Selden, at the city of Washington, in the District of Columbia; one copy to John Withers, at Alexandria, in the State of Virginia; one copy to Robert W. Latham, at the city of Washington aforesaid; one copy to Lawrence P. Bayne, at the city of Alexandria aforesaid; and one copy to G. W. Carlysle Whiting, at the city of Washington aforesaid; or that personal service of the said summons and complaint be made on the said defendants.

Dated December 27th, 1854.

J. J. ROOSEVELT.

156 *Summons.*

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, and G. W. Carlysle Whiting.

To the defendants:

You are hereby commanded and required to answer the complaint in this action which was this day filed in the office of the clerk of the city and county of New York, at the city-hall of said city, and to serve a copy of your answer to the said complaint on the subscribers, at their office, No. 19 Wall street, in said city, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time afore-157 said, the plaintiffs in this action will apply to the court for the relief demanded in the complaint.

Dated December 27, 1854.

CUMMINS, ALEXANDER & GREEN,
Plaintiffs' Attorneys, No. 19 Wall street, N. Y.

CITY & COUNTY OF NEW YORK:

VALENTINE T. MAUD, of New York, being duly sworn, deposes and says that he is advertising clerk in the office of the New York Herald, a daily paper printed and published in the city of New York; and that the advertisement of which the annexed is a printed copy, has been regularly published in the said New York Herald once a week for six weeks success*ful*ly, commencing on the 21st day of May, 1855.

VALENTINE T. MAUD.

Sworn before me this 20th day of July, 1855.

JO. ELLIOTT,
Com'r of Deeds.

158 *Summons.*

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, and G. W. Carlysle Whiting.

To the defendants:

You are hereby summoned and required to answer the complaint in this action, which was this day filed in the office of the clerk of the city and county of New York, at the city-hall of said city, and to serve a copy of your answer to the said complaint on the subscribers at their office, No. 19 Wall street, in said city, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will apply to the court for the relief demanded in the complaint.

159 Dated December 27th, 1854.

CUMMINS, ALEXANDER & GREEN,
Plaintiffs' Attorneys, 19 *Wall St., N. Y.*

CITY & COUNTY OF NEW YORK, *ss:*

HENRY DITHMAR, of the city of New York, being duly sworn, says that he is foreman in the office of the Evening Post, a daily paper printed and published in the city of New York; and that the notice of which the annexed is a printed copy, has been regularly published in the said Evening Post once in each week for six weeks successively, commencing on the twenty-eighth day of December, 1854.

HENRY DITHMAR.

Sworn before me this 17th day of May, 1855.

W'M DIXEY,
Com'r of Deeds.

160 Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, and G. W. Carlysle Whiting.

CITY AND COUNTY OF NEW YORK, *ss:*

ASHBEL GREEN, one of the plaintiffs' attorneys, being duly sworn, says that this suit was commenced by publication; that the time for answering has expired, and that the defendants Selden & Withers are absentees, and that no notice of appearance, demand for copy of complaint, answer, or demurrer has been received from the said Selden and Withers, defendants, or either of them, in this action.

And deponent further says that, on the 28th day of December, 1854, 161 he deposited in the post-office, in the city of New York, a copy of the summons and complaint in this action, directed to each of the said defendants, viz, William Selden, of the city of Washington, in the District of Columbia; John Withers, at Alexandria, in the State of Virginia; and paid the postage on each of said letters.

ASHBEL GREEN.

Sworn to before me this 6th day of Nov'r, 1856.

JOHN BISSELL,
Com'r of Deeds.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE
of Virginia
against
WILLIAM SELDEN AND OTHERS.

At a special term of the supreme court held at the city-hall, in the city of New York, on the sixth day of October, 1856—

Present, the Hon. T. W. Clerk, justice—

162 This cause being regularly called upon the calendar, it is, on motion of Cummins, Alexander and Green, plaintiffs' attorneys, ordered that judgment be entered against the defendants Bayne, Latham, and Whiting, and that it be referred to Stephen Cambrelling, esqr., to compute the amount due to the plaintiff. And upon reading and filing due proof of the service of the summons, by publication, according to the order made on the 27th day of December, 1854, and of the failure of the defendants Withers and Selden to appear, answer, or demur, it is, on motion of Cummins, Alexander & Green, plaintiffs' attorneys, ordered that it be referred to Stephen Cambrelling, esq'r, to take the proof of the demand of the plaintiffs, required by the statute in such case made and provided. And it is further ordered that, upon the coming in of the report of the referee, the plaintiffs may apply to the court at this or any subsequent term for final judgment, or for such relief as they may deem themselves entitled to.

Ent.

T. W. C.

163 Supreme court.

G. W. CARLYSLE WHITING, IMPLEADED WITH
William Selden, John Withers, Robert W.
Latham, and Lawrence P. Bayne,
ads.
THE BOARD OF PUBLIC WORKS OF THE STATE
of Virginia.

GENT.: Please take notice that we are retained by and appear for the defendant G. W. Carlysle Whiting in the above-entitled action, and hereby demand a copy of the complaint therein to be served on us at our office, number two Hanover street, in the city of New York.

New York, March 4, 1856.

Yours, &c.,

BUTLER, EVARTS & SOUTHMAYD,
Att'ys for Def't Whiting.

To Messrs. CUMMINS, ALEXANDER & GREEN,
Pl'ffs' Att'ys.

164 Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia

—

LAWRENCE P. BAYNE, IMPLEADED WITH WILLIAM Selden and others.

GENT.: Please take notice that I am retained by and appear for the defendant Lawrence P. Bayne in the above-entitled action, and hereby demand a copy of the complaint therein to be served on me at my office, number two Hanover street, in the city of New York.

N. Y., April 21st, 1856.

Yours, &c.,

EDWIN M. DANIEL,
Att'y for Def't Lawrence P. Bayne.

To Messrs. CUMMINS, ALEXANDER & GREEN,
Pl'ffs' Att'ys.

165 Supreme court.

LAWRENCE P. BAYNE, IMPLEADED WITH WILLIAM Selden, John Withers, Robert W. Latham, and G. W. Carlysle Whiting,

ads.

THE BOARD OF PUBLIC WORKS OF THE STATE OF Virginia.

The defendant Lawrence P. Bayne, by Edwin M. Daniel, his attorney, answers the complaint in this action as follows, viz:

First. He denies that the defendant William was a partner in the firm of Selden, Withers & Co. on the ninth day of July, 1853, or at any time subsequent thereto, and denies that the other defendants, jointly, said William Selden, made any contract with or became indebted to the plaintiff, but avers that all the transactions in the complaint referred to were between the plaintiffs and the defendants, other than said Selden as co-partners, *consisting* the firm of Selden, Withers & Co. This defendant denies that the defendants or the 166 firm of Selden, Withers & Co. have rendered an account or statement by which they shewed or admitted that there was in their hands by reason of their agency for the plaintiffs, or for which they were accountable to the plaintiffs, the sum of eight hundred and seventy-five thousand four hundred and thirty-nine dollars and eight cents or any sum exceeding the amount of four hundred and thirty-six thousand eight hundred and seventy-four dollars and seventeen cents, including all interest chargeable up to the first day of January, 1855, or that in fact the defendants, or the partners composing said firm of Selden, Withers & Co., were at any time subsequent to the twentieth day of November, 1854, indebted to the plaintiffs for any sum exceeding the amount last above named, and they aver that, excepting such balance, they have fully accounted to the plaintiffs and paid to them the amount or proceeds of all bonds or certificates of indebtedness of the State of Virginia, which they have at any time received from the plaintiffs.

167 Second. And this defendant for a separate defence by way of counter-claim alleges that the plaintiffs are indebted to the said Selden, Withers & Co., in account, the following items, that is to say—

First. For bonds or certificates of indebtedness of said State, amounting to one hundred and eleven thousand dollars of principal, and twenty-two thousand six hundred and eighty-seven dollars and one cent of interest up to the first day of January, 1855, for which the plaintiffs settled with William Sturges, and received the benefit of such bonds and interest, so as to entitle Selden, Withers & Co. to credit for such amount of principal and interest under date of January 1, 1855.

Second. For similar bonds or certificates of indebtedness amounting to one hundred thousand dollars of principal and fifteen thousand six hundred and fourteen dollars of interest, up to January 1st, 1855, for which the plaintiffs settled with Atwood & Rebee, and received the benefit of
such bonds and interest, so as to entitle Selden, Withers & Co. to
168 credit for such amount of principal and interest under date of
January 1, 1855.

Third. For one hundred and forty-five bonds or certificates of indebtedness of said State of Virginia for one thousand dollars each, with unpaid interest thereon up to January 1, 1855, to the amount of four thousand three hundred and fifty dollars, which bonds amount in the whole to one hundred & forty-nine thousand three hundred and fifty dollars, were lost and destroyed in or about the month of September, 1854, by the wreck and loss of the steamship Arctic, by which vessel the said bonds were then in course of transit from England to New York, for the account and benefit of said plaintiffs, the same forming a part of the bonds received by Selden, Withers & Co. from the plaintiffs, for which they were to account, and which the plaintiffs have charged against them in account, by reason whereof the said Selden, Withers &
Co. are entitled to credit in account with plaintiffs, under date of
169 January 1, 1855, for said sum of one hundred and forty-nine
thousand three hundred and fifty dollars.

Fourth. In the sum of sixty-six thousand two hundred dollars and seventy two cents, for the commission and compensation of the said Selden, Withers & Co., as agents of the plaintiffs, for which amount they were and are entitled to credit under date of January 1, 1855, which amount was a just and reasonable compensation, and has been liquidated and assented to by the plaintiffs.

Third. And for a further and separate defence, this defendant upon his information and belief, avers that subsequent to the twentieth day of November, 1854, there have been delivered, transferred, and conveyed by or on behalf of Selden, Withers & Co., to the plaintiffs or to the State of Virginia, or to some person or persons for its use, and have been accepted and received by the plaintiffs, and the said State in and towards satisfaction of the aforesaid balance which was due on the twentieth
day of November, 1854, certain bonds of the Chesapeake and Ohio
170 Canal Company, and certain real estate and other property
to an amount sufficient to extinguish and satisfy the said balance.

E. M. DANIELS,
Att'y for Def't Bayne.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE
of Virginia
against
LAWRENCE P. BAYNE & OTHERS.

The reply of the plaintiffs to so much of the answer of the defendant

Bayne as sets up a counter-claim, respectfully shows that they deny that they are indebted to or are bound to credit Selden, Withers & Co. in account the items mentioned in the said answer by way of counter-claim, or any sum or sums, item or items, whatever, and they deny each and every allegation of the said defendant in said answer alleged by way of counter-claim.

CUMMINS, ALEXANDER & GREEN,
Pl'ffs' Att'ys, No. 12 Wall st.

171 Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN & OTHERS.

At a special term of the supreme court held at the city-hall, in the city of New York, on the 6th day of October, 1856—

Present, the Hon. T. W. Clerke, justice—

This cause being regularly called upon the calendar, it is, on motion of Cummins, Alexander & Green, plaintiffs' attorneys, ordered that judgment be entered against the defendants Bayne, Latham, and Whiting; and that it be referred to Stephen Cambrelling, esq'r., to compute the amount due to the plaintiffs; and, upon reading and filing due proof of the service of the summons by publication, according to the order made on the 27th day of December, 1854, and of the failure of 172 the defendants Withers and Selden to appear, answer, or demur, it is, on motion of Cummins, Alexander & Green, plaintiffs' attorneys, ordered that it be referred to Stephen Camberling, esq'r., to take the proof of the demand of the plaintiffs required by the statute in such case made and provided.

And it is further ordered that, upon the coming in of the report of the referee, the plaintiffs may apply to the court, at this or any subsequent term, for final judgment or for such relief as they may deem themselves entitled to. Copy.

RICH'D B. CONNOLLY, *Clerk.*

Trial-fee paid.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
ag'st
WILLIAM SELDEN & OTHERS.

To the supreme court of the State of New York:

173 In pursuance of an order of this court made in the above-entitled action and bearing date the sixth day of October, 1856, whereby it was ordered that it be referred to the undersigned to compute the amount due to the plaintiffs, and to take proof of the demand of the plaintiffs required by the statute in such case made and provided, I, Stephen Cambrelling, the referee named in said order, do report—

That I have been attended by the respective attornies and counsel of the plaintiffs, and of the defendants Bayne & Whiting, and have thereupon proceeded on the matters so referred. I have examined Thomas H. DeWitt and Ashbel Green as witnesses on the part of the plaintiffs, whose depositions by them subscribed are hereto annexed; and that certain documents were also produced in evidence before me, being the documents referred to in the depositions of said witnesses, and also certain statute laws of the State of Virginia contained in printed volumes of the laws of that State. 174

And I further report that I have ascertained and computed the amount due to the said plaintiffs on their claim as stated in the complaint in this action, and I find and do accordingly report that there is due to the said plaintiffs as aforesaid at the date of this my report, the sum of four hundred and eighty-nine thousand seven hundred and seventy-seven dollars and eighty-eight cents, ($489,777.88,) the particulars of which are set forth in the schedules hereto annexed, marked B and C.

Dated New York, January 15th, A. D. 1857.

J. CAMBERLING, *Referee.*

SCHEDULE C.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE
of Virginia
against
WILLIAM SELDEN AND OTHERS.

175	Balance due plaintiffs Jan'y 1, 1855		$436,874 17
	Interest from 1 Jan'y, 1855, to 15 Jan'y, 1857		53,517 08
			$490,391 25
	Deduct $576.02 and interest from 17 Dec'r, 1855, to 15 Jan'y, 1857, viz:	576 02	
	Interest	37 35	
			631 37
			$489,777 88

Dated New York, Jan'y 15, 1857.

J. CAMBRELING, *Referee.*

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE
of Virginia
ag'st
WILLIAM SELDEN AND OTHERS.

1856, Dec. 17. Attended by Mr. Green, for pl'ffs, and Mr. Southmayd for Bayne & Whiting.

THOMAS H. DEWITT, a witness produced, sworn, and examined on the part of the plaintiffs, deposes—

176 I reside in Richmond, Virginia. I am first clerk in the second auditor's office. I know the firm of Selden, Withers & Co. It was composed of John Withers, William Selden, Lawrence P. Bayne, and Robert W. Latham, and George W. C. Whiting. Their business was that of bankers at the city of Washington. I knew of their enter-

ing into a contract with the board of public works of the State of Virginia. Mr. Bocock, the attorney general of the State of Virginia, I think, has the contract. Schedule A annexed to the complaint in this action is a copy. The agency of Selden, Withers & Co. terminated in Nov'r, 1854, on their failure. Five million five hundred and fifty-seven thousand dollars bonds was delivered to them, and seventy-five thousand pounds of sterling bonds. It is part of my duty as clerk in the auditor's office to audit the amount of the State of the board of public works with Selden, Withers & Co. From my knowledge of the transaction the paper marked No. 1 shows correctly the state of the accounts. On the 1st Jan'y, 1855, there was due to the plaintiffs $436,874.17. A small pro-rata dividend was made, I think, in December, 1855, of 177 a little over $500—not exceeding $600. I don't know of any other payments being made to the plaintiffs or to any one for their use on this account. I knew the firm of Selden, Withers & Co. existed from July, 1851, to Nov'r, 1854, when they failed. The board of public works is a corporation under the constitution of Virginia, and its powers are defined by the Code, and the law of 1853. I am ex-officio assistant secretary of said board of public works.

THO'S H. DEWITT.

Sworn and subscribed this 17th day of December, A. D. 1856.

J. CAMBRELING, *Referee.*

Ex. No. 2.

$576.02.] BOARD OF PUBLIC WORKS,
TREASURY OFFICE, 17 *December*, 1855.

Received of W. P. Bocock, att'y gen'l, five hundred and seventy-178 six dollars and two cents, being the amount collected of English and Bayne, trustees in Selden, Withers & Co.' deed of trust, in part of the State of Virginia as a creditor of said house to rateable satisfaction of its debts.

J. B. STOVALL.

To the SECOND AUDITOR.

SECOND AUDITOR'S OFFICE, 30 *Dec.*, 1856.

The above is a true copy of a receipt on file in this office.

W'M A. MONCURE,
2d Aud'r.

SECOND AUDITOR'S OFFICE, 30 *Dec.*, 1856.

To Messrs. CUMMINS, ALEXANDER & GREEN,
No. 12 *Wall street, N. Y.*

GENT.: The above is a correct copy of an official receipt for the amount which I specified as having been received from Selden, Withers & Co.' trustees since the failure of the firm.

THOMAS H. DEWITT.

179 Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN & AL.
} 1857. January.

ASHBEL GREEN, a witness produced, sworn, and examined on the part of the plaintiffs, deposes:

I reside in New York City, and am one of the attorneys of the plaintiffs. I know of no other payments being made to the plaintiffs, or to any one for their use, on the account in suit, except a payment mentioned by Mr. Dewitt, the amount of which is $576.02, and was paid 17 December, 1855, as appears from Exhibit No. 2, herewith annexed.

ASHBEL GREEN.

Sworn and subscribed this 14th day of January, 1857, before me.

J. CAMBERLING, *Referee.*

180 Ex. No. 1.—Schedule B.

Board of Public Works State of Virginia, in ac. with Selden, Withers & Co.

Dr.

	1855.			
	Jan. 1.	To amount of bonds, part of the advance of $600,000 settled by the board of public works with W'm Sturges......	$111,000 00	
		Amount of the interest up against same rendered to board of P. W., including the Jan'y coupons on the foregoing $111,000.............	22,687 01	
				133,687 01
		W'm Sturges, being indebted to Selden, Withers & Co. in the amount of the 111 bonds above mentioned, with the interest thereon, as above stated by them, sold & delivered to him the *bonds* of public works, secured the settlement of said transaction, received from W'm Sturges satisfaction for such indebtedness, and discharged him from liability therefor, & thereupon became bound and agreed to give credit to Selden, Withers & Co. on account for the amount of said indebtedness of William Sturges.		
181		To amount of bonds, part of the advance of $600,000 settled by the board of public works with Atwood & Reber............	100,000	
		Am't of interest on acc't against the same rendered to board of public works, including the Jan'y, 1855, coupons in the foregoing $100,000	15,614	
				115,614
		Atwood & Reber, being indebted to Selden, Withers & Co. in the amount of the 100 bonds above mentioned, with the interest thereon, as above stated, sold to said Atwood and Reber, by Selden, Withers & Co., the board of public works assumed the settlement of said transaction, received from Attwood & Reber satisfaction for such indebtedness, and discharged them from liability therefor, and thereupon became bound and agreed to give credit to Selden, Wethers & Co., on account for the amount of said indebt-		

182	edness of Atwood & Reber, this amount, charged in full of all commissions & compensation, and agreed to by the board of public works		66,200 72
"	To 145 Virginia State bonds, of $1,000 each, lost on steamer Arctic in the fall of 1854, in transitu, from Geo. Peabody & Co., London, to Selden, Withers & Co. (Thes' bonds made about the balance due from Peabody & Co. to Selden, Withers & Co., agent of the board of public works, and the freight and insurance were charged by the former to the latter. S., W. & Co., if credited by them, will protect the State of Virginia from any claim by Peabody & Co., the board of public works yielding up the or Peabody & Co. for $108,500.)		
	Bonds from No. 4742 to 4748, both inclusive	7,000	
	" " " 5461 " 5500 "	40,000	
	" " " 5501 " 5550 "	50,000	
	" " " 5651 " 5698 "	48,000	
183		145,000	
	C. Coupons on same, due Jan'y 1, 1855.	4,350	
			149,350
			436,874 17
			$901,725 90

Cr.

1855.			
Ja'y 1.	By amount of Virginia 6 % coupon bonds, advanced under agency-contracts, & not paid for	600 000	
	Coupons on same, due 1 Jan., 1855	18 000	
			618,000
" "	Balance interest ac., same last interest settlement, being accrued interest on bonds paid for ac. board public works	8,431 94	
	Less deficiency, as shown by books of of S., W. & Co	402 57	
			8,029 37
"	Amount received for premiums		8,800 00
	Outstanding coupons, to wit: Whole amou't which should have been paid by Selden, Withers & Co., to 1st July, 1854, inclusive	950,340	
	Less amount paid and returned to board of public works	917,460	
			32,880
	Amount due on £75,000 sterling 5 % bonds, as per ac		234,016 53
			$901,725 90
	By balance due b'd of pub. works, 1 Ja'y, 1855.		$436,874 17

184 Having ascertained since putting in the answer of the defendant Lawrence P. Bayne that the property and securities mentioned or referred to in the third specification of defence set forth in said answers, were transferred to the plaintiff by way of collateral security, and not in payment, no specification is furnished. the said third article of defence set forth in said answer being abandoned.

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN & OTHERS.

We consent that application for final judgment (in pursuance of order made at special term, Oct. 6, 1856,) be made by the plaintiffs at a special term to be held at chambers, at the city of New York, on the 31st day of January, 1857, at 10 o'clock a. m., and admit due notice of such application, and of application for an allowance at that time.

Dated January 30, 1857.

185 BUTLER, EVARTS & SOUTHMAYD,
Att'ys for Pl'ff Whiting.
E. M. DANIEL, *Att'y for Bayne.*

Supreme court.

THE BOARD OF PUBLIC WORKS OF THE STATE of Virginia
against
WILLIAM SELDEN, JOHN WITHERS, ROBERT W. Latham, Lawrence P. Bayne, and G. W. Carlysle Whiting.

This summons in this action having been duly served personally upon Robert W. Latham, on the 29th day of March, 1856, and no copy of answer or demurrer having been served upon the plaintiff's attorneys by the said Latham, and the said summons having been duly served personally upon Lawrence P. Bayne, on the 31st day of March, 186 1856, and the said Bayne having answered, and the said summons having been duly served upon William Selden, John Withers, and G. W. Carlysle Whiting, by publication, in pursuance of an order made on the 27th day of December, 1854, and the defendant Whiting having appeared in the action, and no copy of an answer or demurrer having been served on the plaintiff's attorneys by the defendants Selden, Withers, or Whiting, and application having been made at a special term of this court held on the 6th day of October, 1856, for the relief demanded in the complaint, and judgment having been taken for the plaintiffs, and a reference having been ordered to take the proof required by the statute, and the referee having reported that there is due to the plaintiffs from the defendants the sum of four hundred and eighty-nine thousand seven hundred and seventy-seven dollars and eighty-eight cents, at the date of his report, to wit, on the 15th day of January, 1857: Now, on motion of Cummins, Alex-187 ander & Green, attorneys for the plaintiff, it is adjudged that the said the Board of Public Works of the State of Virginia, plaintiffs, recover of William Selden, John Withers, Robert W. Latham, Lawrence P. Bayne, and George W. Carlyle Whiting, the sum of four hundred and eighty-nine thousand seven hundred and seventy-seven dollars and eighty-eight cents, with an allowance of one-half of one per cent. upon the amount secured, and twelve thousand three hundred and sixty-two dollars and seventy-two cents, costs and disbursements, amounting in the whole to the sum of five hundred and two thousand one hundred and forty dollars and sixty cents.

(Endorsed :) Filed May 2d, 1857, at 11 o'clock and 48 m.

All of which we have caused by these presents to be exemplified, and the seal of the supreme court *to* hereto affixed.

188 Witness Hon. D. P. Ingraham, a justice at the city of New York, this 30th day of July, A. D. 1858, and of our independence the eighty-second.

RICH. B. CONNOLLY, *Clerk.*

STATE OF NEW YORK,
City & County of New York, ss :

I, D. P. Ingraham, a presiding justice of the first judicial district of the supreme court of the State of New York, do hereby certify that Richard B. Connolly, whose name is subscribed to the preceding exemplification, is clerk of the city and county of New York, and clerk of the supreme court of said State for said county, and as such has the custody of the records and files of said supreme court in said county; that the seal thereto affixed is the proper seal of said supreme court for said county, and that the attestation of the above is in due form.

In witness whereof I have hereunto subscribed my name this 30th day of July, A. D. 1858.

D. P. INGRAHAM, *Justice.*

189 The plaintiffs, by their counsel, object*s* to the answer of John Withers, offered to be filed in this cause, for the following reasons:

1. Because the def't in response to the bill in which an Exhibit (D) is filed, being a copy of a deed executed by the firm of Selden, Withers & Co., (except W'm Selden,) of which firm John Withers was one, and a party to said deed, refuses to answer whether the same is a true copy of said deed. It is his own deed, and the plaintiffs have the right to substitute his answer as evidence of the deed, without being required to offer other proof thereof. The deed, as filed, does not postpone the State of Va. to all other creditors as seems to be implied in the answer.

2. Because he refuses to answer whether Exh. A, filed with the bill and made a part thereof, is or is not a true copy of the contract made between the plaintiffs and the said firm of Selden, Withers & Co., of which def't was a member.

190 3. Because he refuses to answer whether Exh'ts B & C, filed with and made part of said bill, are or are not true statements of the bonds delivered and money paid under the contract, a copy of which, Exh. A aforesaid, is filed with the bill.

4. Because the same is done as to Ex's G, E, & F.

5. Because the def't does not answer to the distinct allegation on page 6 of the bill as to the amount of social assets which will be realized, and that the amount will not suffice to do more, if so much, then pay the interest accrued upon the debt of the firm. In this respect the answer is wholly insufficient and evasive.

6. The def't has failed to answer the statements made in the bill as to the suit in Washington City; whether he has appeared in said suit;

whether the claim of the plaintiffs has been audited there, and the balance found due according to statement marked Pl'ffs' Exh. G; and whether the same has been excepted to by def't, or any of the members of said firm.

191 7. The def't has failed to answer as to the statement on page 5 of the bill in regard to the settlement made per Statement G, and that the amount appearing due thereby, sct., $436,874.17, is due to the plaintiff as of Jan. 1, 1855.

8. And in and throughout the answer the same is clearly insufficient & plainly evasive.

Nov. 24, 1859.

COMPLAINANTS,
By J. R. TUCKER.
L. B. TAYLOR, *Counsel.*

And at another day, to wit, at a circuit court, continued and held for Alexandria County, on the first day of June, 1860—

The complainants having filed a paper, marked Exhibit AA, purporting to be the original contract between complainants and the firm of Selden, Withers & Co., bearing date July 9, 1853, a copy of which was heretofore filed with the bill in this cause, marked Exhibit A, this day moved the court to be permitted to prove the original contract aforesaid; and thereupon leave being granted so to do by the 192 court, the said paper, marked Exhibit AA, was proved by the oath of John W. Burke as to the signature of the said firm, and by the oath of J. R. Tucker as to the signature of Arch'd Graham, pres. B. P. W.; and the said complainants asked leave to file, and said leave being granted, they thereupon did file a duly-authenticated copy of the deed of trust executed by the members of the firm of Selden, Withers & Co. (W'm Selden excepted) to John A. English and W'm Bayne, bearing date November 29th, 1854, recorded in the circuit court for the city of Washington, in the District of Columbia; and also, by like leave, filed a duly-authenticated copy of the deed of John Withers to W. P. Bocock and Andrew Wylie, bearing date January 24th, 1855, recorded in the county court for Alexandria County, copies of both of which deeds have been heretofore filed in said cause by the complainants as exhibits with their bill.

193 *Contract of Selden, Withers & Co. with the B. P. Works for the sale of $6,000,000 coupon-bonds.*

EXHIBIT AA.

This agreement witnesseth that the Board of Public Works of Virginia, having occasion to borrow money upon the credit of the State, have appointed Selden, Withers & Co., of the city of Washington, their agent, to make sale of coupon-bonds of the said State to the amount of six millions of dollars on the terms herein set forth:

1. Selden, Withers & Co. are to determine whether the bonds to be sold under this contract shall be six-per-cent. coupon-bonds, as heretofore issued by the board of public works, or five-per-cent. sterling coupon-bonds.

2. The engraving of the bonds to be sold under this contract shall be executed under the direction of Selden, Withers & Co., at the expense of the State.

3. The principal and interest of the said bonds shall be made

194 payable in the city of New York or London, as may be determined between Selden, Withers & Co., and the parties that may purchase the bonds.

4. The price at which the bonds shall be sold is to be regulated by Selden, Withers & Co., with this exception—that no bonds shall be sold under this contract at a price below their par value without the special direction and authority of the board of public works, but said board hereby reserves to itself the right to fix a higher minimum price whenever they may think proper before a sale.

5. Selden, Withers & Co. are to pay all the expenses of carrying into effect their agency created by this agreement, and, in full satisfaction of all expense and trouble of said agency, are to have a commission of one per cent. on the gross amount of their sales.

6. The gross money raised by each sale for principal, interest, and premiums, less their commission of one per cent. as aforesaid, they shall, in a reasonable time after the sale, pay over to the board.

195 7. In order to furnish to Selden, Withers & Co. all the facilities for availing themselves of opportunities to sell at the highest prices, the board will, from time to time, place in their hands, ahead of sales, bonds to be sold under this contract, not exceeding in amount five hundred thousand dollars, and in order to save the board from the necessity at any time of causing forced sales and of reducing the price of the bonds below their par value, in order to effect such sales, Selden, Withers & Co. agree that if the board shall, at any time, be in present want of funds before sales have been made, they will, if required, advance to the board, from time to time, such amounts as may be necessary to meet the demands upon the board over and above sales previously made, and in anticipation of sales thereafter to be made, upon the receipt of bonds to that amount; any such advancements to be re-imbursed to them out of such after sales, with interest at the rate of six per cent. per annum.

8. All payments to the board of public works, under this agreement, to be made as heretofore, namely, by depositing the money in one of the banks at Richmond to the credit of said board. 196

9. During the existence of this agency, which shall continue till it is fully executed, or till the board shall see cause to terminate it for infidelity or suspicion of infidelity on the part of their said agent, the board will not appoint another agent to sell coupon-bonds nor sell such bonds to other persons without first conferring with Selden, Withers & Co.

10. It is further agreed between the parties that, to the extent of the issue of bonds made payable in New York, semi-annually, and not less than fifteen days before the interest thereon shall fall due, and to the extent of the issue of bonds made payable in London, semi-annually, and not less than sixty days before the interest thereon shall fall due, there shall be placed in one of the banks of the city of Richmond, to the credit of Selden, Withers & Co., in specie funds, an amount equal to said semi-annual interest; and Selden, Withers & Co., in consideration thereof, are faithfully to pay the said interest in the city of New 197 York and in London when due; but the board of public works shall have the right at any time, with or without cause, to withdraw and terminate this agency for paying interest as aforesaid, and to refuse to make the deposit for that purpose.

Finally. It is agreed between the parties that the board of public works shall have the benefit of the exchange between the United States and Europe on all bonds sold under this contract in the latter country;

which exchange is to be accounted for by Selden, Withers & Co. as a part of the gross amount of sales upon which they are to receive a commission of one per cent. aforesaid.

In witness of all which, Archibald Graham, the president of the board of public works, and Selden, Withers & Co. have hereunto set their hands this the ninth day of July, A. D. 1853.

ARCH'D GRAHAM,
Pres. B. P. W.
SELDEN, WITHERS & CO.

198 *John Withers, Lawrence P. Bayne, Geo. W. Carlyle Whiting, and Robert W. Latham, to John A. English & William Bayne.—Deed of trust, recorded* 1st *December,* 1854, *at ½ past* 11 *o'clock, in liber J. A. S., No.* 88, *folios* 37, *&c.*

This indenture, made and entered into this 29th day of November, 1854, by and between John Withers and Lawrence P. Bayne, of the town of Alexandria, and State of Virginia, and George W. Carlyle Whiting and Robert W. Latham, of the city of Washington, of the one part, John A. English and William Bayne of Alexandria, V'a, trustees, of the second part, and all the creditors of the firm of Selden, Withers & Co., late copartners for the transaction of banking and exchange in the city of Washington, of the third part.

Whereas the said copartnership, formed in the month of October, 1850, consisted, when formed, of one William Selden, of the said city of Washington, and the said John Withers, Lawrence P. Bayne, and Robert W. Latham, who continued to constitute the said copartner-
199 ship until the 7th day of June, 1852, when the said William Selden, with the assent of his said partners, sold out all his interest in the said copartnership to the said George W. Carlyle Whiting, who thereupon took the place of the said Selden in said copartnership, the said Selden agreeing to permit his name to be continued in the said copartnership, and to be used by the said partners in the transaction of the business of the firm, which has been done up to the expiration of said firm, the said Selden having, however, no beneficial interest in the transactions of said firm and no participation therein, the said Whiting, Bayne & Latham agreeing to indemnify said Selden as well against all liabilities resting upon him as one of said firm at the time of his said sale to Whiting as against such as he might thereafter incur by the use of his name in the transactions of the firm as aforesaid, and the said John Withers agreeing to indemnify him against such liabilities only as he might incur by such use of his name by the firm after the sale to Whiting as aforesaid;

200 And whereas the said Robert W. Latham did, on the 31st day of May, 1854, withdraw from the concern of the said firm, yet with the understanding that he was to hold his interest in said copartnership;

And whereas the said co-partnership has expired by its original limitation, and the members of it do not propose further to continue business either upon the terms of the original agreement of copartnership or under any new agreement;

And whereas the said copartnership is the owner of, or rather the assets of said corporation consist of, sundry real and personal estate, bonds, bills, notes, stocks, rights, credits, claims, and demands, legal and equitable, which assets are believed to be fully and accurately described in schedule hereto annexed, marked A, made a part of this deed;

And whereas the said copartnership is indebted unto sundry individuals, companies, copartnerships, and to the State of Virginia, as holders of notes issued by said copartnership, payable to bearer, redeemable in notes of the banks of Virginia, and put into circulation under the
201 denomination of notes of the Exchange Bank, the name and style of the house at which said copartnership transacted its business in the said city of Washington, and for monies deposited at their said banking-house to be held by said firm, with and without interest, for stocks deposited with said firm and used by them with the authority of the depositors, or in such manner that said firm are bound for them, and are indebted on other accounts, and are especially under an obligation to redeem certain bonds of the Virginia and Tennessee Railroad Company, which they have hypothecated in New York City, and are indebted to the State of Virginia in an amount yet to be ascertained, arising out of the transactions of the firm as agents of the said State for the sale of her bonds, and the members of the said firm being desirous of having all the assets thereof made available as early as practicable, and applied to the satisfaction of the liabilities of the firm in the mode hereinafter provided, for which they, upon mature and anxious consideration, have deemed most just and equitable:

202 Now, this indenture witnesseth that, for and in consideration of the premises, and also of the sum of one dollar, to them, the parties of the first part hereto, by the parties of the second part hereto in hand paid at and before the sealing and delivery of this indenture, the receipt whereof is hereby acknowledged, they, the parties of the first part hereto, to wit, the said John Withers, Lawrence P. Bayne, George W. Carlysle Whiting, and Robert W. Latham, do, and each of (them) doth, hereby give, grant, bargain & sell, alien, enfeoff, assign, convey, and transfer, and by this indenture have and each of them hath given, granted, bargained and sold, aliened, enfeoffed, assigned, conveyed, and transferred to said parties of the second part hereto, to wit, the said John A. English and William Bayne & their heirs, all the estate, property, rights, credits, claims, & demands of said copartnership, named, specified, and described in Schedule A, made a part of this indenture as aforesaid, and all other estate, property, rights, credits, claims, and demands, if any, belonging to said copartnership, wheresoever the same may be: To have and
203 to hold said property, estate, rights, credits, claims, & demands hereby conveyed to them, the said John A. English and William Bayne and their heirs, to the only proper use and behoof of said English & Bayne & their heirs: Upon trust, nevertheless, that the said trustees will proceed with all convenient dispatch to collect and render available all debts, rights, credits, claims, and demands due, owing, or belonging to said copartnership, and shall also make sale of all estate & property, real and personal, of said copartnership, in order to have the proceeds applied as early as practicable to the liquidation and satisfaction of the liabilities of said copartnership in the manner hereinafter more particularly provided for.

And whereas the estate, property, rights, credits, claims, and demands hereby conveyed are much scattered and dispersed, and as many of the debtors of said copartnership may be in doubtful and failing circumstances, so that suits against them might be attended with much cost without any successful result;

And whereas it will in many cases be best for the interests of
204 all concerned that private sales of real and personal estate of said copartnership hereby conveyed, or of portions thereof, be from time to time made:

The said John A. English and William Bayne are hereby invested with power to adjust & settle in their discretion, by compromise, debts, rights, credits, claims, or demands belonging to said copartnership, and to make sale of the real and personal estate hereby conveyed either at private sale or public sale, and for cash or upon reasonable credits, as the said trustees shall think best calculated to produce the highest price; and all sales made by said trustees at public auction shall be made upon reasonable previous & public notice of the time and place of sale; and said trustees are hereby invested with power and authority to appoint agents and attorneys-in-fact under them so far as in their judgment the same may be necessary to enable them to fulfil' the trusts hereby devolved upon them; and should either of said trustees die before the said trusts are fully performed and fulfilled, the survivor shall have all titles, power, and authority hereby conferred upon them
205 jointly. The said trustees, and the survivor of them, shall apply the assets of the firm hereby conveyed, when realized, as follows:

First. To all proper expenses of the trust.

Secondly. To the redemption of bonds of the Virginia and Tennessee Railroad to the amount of one hundred and ninety thousand dollars, in the hands of J. T. Goutter, of New York, agent of the Bank of Hamburg, of Dennistoun, Wood & Co., of New York City, and of the cashier of the Bank of Commerce, of New York.

Thirdly. To the redemption of the notes issued payable to bearer, payable in notes of Virginia Bank, under the name and denomination of Exchange Bank notes as aforesaid, & known as the circulation of the Exchange Bank. And—

Fourthly & lastly. To all the other creditors of said copartnership, including the State of Virginia, equally, the classes to be fully satisfied in the order in which they are named, that is to say, the second to be satisfied before the third, the third to be satisfied before the fourth and last; the third and fourth classes to share the fund as between the members of said classes rateably, any balances there may be
206 due to the clerks or employees of the firm are to be taken as a part of the first class of liabilities hereinbefore provided, and to be paid equally with expenses of the trust. It is, however, hereby provided that if the said partners shall, within sixty days from the date of this deed, agree with the board of public works of Virginia, or other person or persons having authority to act for the State, it shall be the duty of said trustees, and they are hereby empowered in such event, upon the call of said partners, to deliver over to the agents of the State the bonds of the Chesapeake & Ohio Canal Company, together with the interest-coupons and arrears of interest shewn by and mentioned in Schedule A aforesaid, or such portion of them as the call of said partners shall embrace, in fulfillment of said arrangement, the said partners feeling an earnest desire to arrange the debt due to the State upon terms satisfactory to all and consistent with justice to their other creditors. If no such arrangement be made within the time specified, then this deed to stand as if no such provision as this last were contained in it.

207 In testimony whereof the parties have hereto set their hands & affixed their seals this day and year first above written.

JOHN WITHERS. [SEAL.]
L. P. BAYNE. [SEAL.]
G. W. CARLYLE WHITING. [SEAL.]
R. W. LATHAM. [SEAL.]
J. A. ENGLISH. [SEAL.]
W'M BAYNE. [SEAL.]

Signed, sealed, and delivered in presence of—
T. C. DONN.
B. K. MORSELL.

DISTRICT OF COLUMBIA,
County of Washington, viz:

We, Thomas C. Donn & Benjamin K. Morsell, justices of the peace in and for said county & district aforesaid, do hereby certify that, in our county aforesaid, personally appeared John Withers, Lawrence P. Bayne, George W. Carlyle Whiting, Robert W. Latham, John 208 A. English, William Bayne, parties to the foregoing and annexed deed or instrument of writing, bearing date this 29th day of November, 1859, they being personally well known to us as such, & acknowledged the said deed to be their act and deed for the purposes therein expressed.

Given under our hands & seals this 29th day of November, 1854.

THOMAS C. DONN, *J. P.* [SEAL.]
B. K. MORSELL, *J. P.* [SEAL.]

DISTRICT OF COLUMBIA,
Washington County, sct:

I, John A. Smith, clerk of the circuit court of the District of Columbia for the county of Washington aforesaid, do hereby certify that the annexed and foregoing deed of trust, John Withers and others to John A. English and William Bayne, is truly and correctly copied from record J. A. S., No. 88, folios 37, 38, &c., one of the land-records for the county and District aforesaid, and to which said deed of trust is annexed schedules showing names of creditors, assets conveyed, &c., but not embraced in the copy.

209 In testimony whereof I hereto subscribe my name and affix the seal of said court this thirty-first day of March, A. D. 1860.

[SEAL.] JNO. A. SMITH, *Cl'k.*

This deed, made this 24th day of January, in the year 1855, between John Withers, of the county of Alexandria and State of Virginia, of the first part, and Willis P. Bocock and Andrew Wylie, parties of the second part, witnesseth that—

Whereas the late firm of Selden, Withers & Co., of Washington, D. C., are indebted to the Commonwealth of Virginia in a large balance, the amount not yet adjusted and ascertained, arising out of the transactions of that firm under their contracts with the board of public works of Virginia, and as agents appointed by said board to sell the bonds of said Commonwealth and to pay interest thereon;

And whereas certain members of said firm, including the said Withers, have, by a deed bearing date the 29th November, 210. 1854, and of record in the District of Columbia aforesaid, conveyed and assigned the assets of that firm to William Bayne and John A. English, trustees to secure the debts due by said firm, including that due to the said Commonwealth as aforesaid;

And whereas the said John Withers, as one of the members of said firm, is desirous, as far as he is able, to furnish to said Commonwealth out of his private means, sufficient security for any balance of its debt that may remain unsatisfied out of the social assets conveyed as aforesaid, and so to arrange that the social assets may be saved from loss and sacrifice as much as possible:

Now, therefore, in consideration of the premises and of the sum of one dollar to the said John Withers paid by the said parties of the second part, the receipt whereof he hereby acknowledges, he, the said John Withers, hath granted, bargained, and sold, alien, asssign, and convey unto the said Willis P. Bocock and Andrew Wylie, the said
211 parties of the second part, all the following real estate, lying and
situate in the said county of Alexandria and State of Virginia, namely:

All that certain lot or parcel of land, in the city of Alexandria and State of Virginia, bounded and described as follows: Beginning at a point 24 feet from Patrick street, on the north side of King street; thence running north one hundred feet; thence east fifty one feet, more or less, to the line of S. S. Masters; thence north fifty-six $\frac{3}{12}$ feet to Hugh C. Smith's line; thence west seventy-five feet to Patrick street; thence south, one hundred and seventy-six $\frac{3}{12}$ feet to King street; thence east twenty-four feet to the place of beginning. Also all that other lot or piece of land in the said city, beginning on the south side of King street at a point one hundred and twenty-three $\frac{5}{12}$ feet east of Columbus street; thence east, with King street, thirty feet one and $\frac{1}{2}$ inches; thence south, parallel with *Chambers* street, one hundred and fifty-six $\frac{7}{12}$ feet; thence west, parallel with King street, thirty feet one & $\frac{1}{2}$ inches; thence north, parallel with Columbus street, one hundred
212 and fifty-six & $\frac{7}{12}$ feet to the place of beginning. Also, all that
other lot or piece of land in said city, being lot No. 10 in the plan thereof, beginning on the north side of King street, between Union and Water streets, at the east line of the lot of land formerly conveyed by *line of the lot of land formerly conveyed by* Robert Allison & wife to James Patton and David Finley, supposed to be sixty feet east of Water street; thence east on King street thirty feet; thence north, parallel with Water street, eighty-one feet to a thirty-feet alley; thence west on said alley, parallel with King street, thirty feet, and thence south, parallel with Water street, to the place of beginning. Also, that other lot or piece of land in said city fronting on the north side of King street, between Union and Water streets, thirty feet, and extending with same width eighty-one feet to the above mentioned thirty-feet alley, adjoining on the west the corner lot and warehouse of the late Anthony C. Cazenove, and on the eastern side, the lot last above
213 described. Also, all that other piece or lot of land in said city
bounded by Alfred street on the east, by Patrick street on the west, by Pendleton street on the north, & by Oronoco street on the south, constituting one square of land, & containing two acres more or less. Also, an undivided interest of one-half in and to all that acre or half square of land in said city, beginning on the north side of Princess street, at the middle point of the square formed by Alfred & Patrick streets, running thence west with Princess street, one hundred and twenty-three $\frac{5}{12}$ feet to the intersection of Princess and Patrick streets, the whole length of the square to Oronoco street; thence east with Oronoco street, one hundred and twenty-three $\frac{5}{12}$ feet to the middle of the square on the north side formed by Alfred & Patrick streets; thence south through the said square, three hundred and fifty-three $\frac{6}{12}$ feet, the place of beginning, subject, nevertheless, to a deduction of about one-fourth part thereof, on the southern side or end heretofore sold and conveyed to the trustees of the Methodist Protestant
214 Church of Alexandria. Also, the undivided half of a ten *an*
half acre lot on the borders of said city of Alexandria and on

the Washington road; beginning on the east side of the Georgetown road, at the line of a tract of land formerly of Elisha C. Dick; thence binding on said road south 5° east 35 poles to the corner of Baldwin Dade's purchase from Alexander; thence north 85° east 46 poles; thence north 5° west thirty-five poles to the first-mentioned line of the land formerly of the said Elisha C. Dick; thence along the same, south 85° west forty-eight poles to the place of beginning, being the same which was conveyed to Abner Flowerree and the said John Withers from the executors of Anthony C. Cazenove, dec'd, by deed dated 3d March, 1853, recorded in the said county, in liber O, No. 3, page 448:

To have and to hold the above-described lot or parcels of land and undivided interests aforesaid respectively, with the buildings, improvements, rights, privileges, and appurtenances thereunto belonging, unto
the said Willis P. Bocock and Andrew Wylie, and the survivor
215 of them, and his heirs and assigns forever—

In trust, nevertheless, that the said parties of the second part, or in case of the death or refusal to act of one of them, then the other shall take and hold the property hereby conveyed and every part thereof, (excepting only the dwelling-house of the said John Withers, at the corner of King and Patrick street', which he is to be permitted to occupy free of rent until or unless the sale hereafter referred to shall take place,) and out of the accruing rents and profits pay the proper expenses and cost of this trust, including a reasonable compensation to the trustees or trustee, as the case may be, and all taxes on the property, and apply the residue to the debt aforesaid to the Commonwealth of Virginia until the sale be made as hereafter provided.

And being thereunto required by the second auditor or other proper authority of the Commonwealth of Virginia, shall cause all or any of
the property hereby conveyed, to be sold, after sixty days' notice,
216 by advertisement in some daily newspaper of the city of Alex-
andria aforesaid, and by personal notice to the said John Withers, his personal representatives or assigns, of the time, place, and terms of sale. The terms of sale in every case to be either for cash or on reasonable credit, as the same may be agreed upon between the said John Withers or his personal representatives or assigns on the one part, and the said second auditor or other proper authority of the Commonwealth of Virginia, or failing such agreement, then on such terms as the trustees or acting trustees shall deem fair and consistent with the interests of all parties concerned. The proceeds of the sale to be applied as hereinbefore directed for the rents and profits, and any excess of said proceeds, after fully paying off said debt, to be paid over to the said John Withers or his personal representatives. On collecting the purchase-money, the trustees or acting trustees to convey the title in and to the property sold to the purchasers.

In witness whereof the said John Withers hath hereunto set
217 his hand and seal the day and year first above written.

JOHN WITHERS. [SEAL.]

Witness (the words "some" & "Alexandria aforesaid" being on this page being first interlined.)

JA'S A. ENGLISH.

COUNTY OF ALEXANDRIA, *set:*

I, James A. English, a justice of the peace for the county aforesaid in the State of Virginia, do certify that John Withers, whose name is signed to the writing above, bearing date on the 24th day of January, 1855, has acknowledged the same before me in my county aforesaid.

Given under my hand this 29th day of January, 1855.

JA'S A. ENGLISH, *J. P.*

Alexandria County court, February 6th, 1855.

218 This deed was presented to the court, and having been acknowledged before a justice, admitted to record.

Teste: B. H. BERRY, *Clerk.*

A copy. Teste:

B. H. BERRY, *Clerk.*

And on the same day, to wit, at a circuit court continued and held for Alexandria County on the 1st day of June, 1860, the defendant John Withers asked leave to file his answer in this cause; to which answer so offered to be filed, the complainants excepted in writing, and the court overruling said exception, granted the leave to the defendant to file the same; and thereupon the same being filed the complainants replied generally.

And thereupon this cause came on again to be heard this first day
of June, 1860, upon the papers formerly read, the answer of said John
Withers, and the general replication thereto, and also upon the papers
proved and filed under the order of this court of this day, and
219 therein recited, the order of the last term, the report of Com-
missioner Yeaton under said last-named order, the exceptions of
the defendant thereto, which exceptions were argued by counsel, and
upon consideration whereof by the court were overruled and the report
was thereupon confirmed.

And the cause being so heard, was argued by counsel, and the court upon full consideration of the same, doth adjudge, order, and decree, that the complainants do recover from the defendants W'm Selden, John Withers, L. P. Bayne, R. W. Latham, and G. W. C. Whiting, the partners composing the late firm of Selden, Withers & Co., the sum of five hundred and thirteen thousand six hundred and fifteen dollars and twenty-nine cents, with interest on three hundred and eighty-two thousand two hundred and ninety-eight dollars and fifteen cents, a part thereof from the 1st day of April, 1860, until paid, being the sum ascertained to be due by the said report of the commissioner.

And it appearing to the court by the report of the commis-
220 sioner that the amount of good and available assets in the hands
of the trustees, English and Bayne, under the social deed, a copy
of which is filed in the cause, will not, with the collaterals ordered to be sold under the decree of the last term of this court in the same suffice to pay the debt herein decreed to be due and payable, and secured by the deed of John Withers to Bocock & Wylie, a copy of which is exhibited with complainants' bill, doth further adjudge, order, and decree that unless the said debt is paid by the said defendants against whom this decree for said debt is entered, or by some one of them, or by some one for them and in their behalf, on or before the 1st day of December, 1860, the property conveyed by the said deed of John Withers, dated Jan. 24th, 1855, and recorded in the county court of Alexandria, or so much thereof as shall be sufficient for the purpose, shall be sold, after advertising the time and place for selling the same in the two newspapers published in the town of Alexandria, for sixty days be-

fore the same takes place, upon the following terms, sct, ten per
221 cent. in cash on the amount of purchase-money, and the residue
in three instalments, at six, twelve, and eighteen months respectively, the title being retained as a security for the said deferred instalments, and the purchaser or purchasers giving bonds with personal security for said deferred instalments—the said sale to be subject to the right to resell for failure to pay deferred instalments as they fall due, and the cash payment to be forfeited therefor.

And the court in order to the execution of this decree for sale, doth hereby appoint J. R. Tucker, one of the counsel for the complainants, and R. E. Scott, one of the counsel for the defendants, special commissioners for the purpose, who are hereby required to make sale under this order, but so as to sell no more than shall be necessary for the payment of said debt when the proceeds of such sale shall be applied thereto, together with the good and available social assets in the hands of said trustees, English & Bayne, and the collaterals heretofore ordered to be sold,
222 and to return their report of sales under this order to this court;
but the said commissioners shall not act under this order until they shall execute a bond or bonds before the clerk of this court, with personal security, to be approved by him, in the penalty of fifty thousand dollars, conditioned according to law for the due and proper performance of all duties devolved on them by this or any future decree or order of this court.

The amended answer of John Withers to the bill of complaint of the Board of Public Works of Virginia, exhibited against him and others in the circuit court of Alexandria County.

This respondent, re-affirming the matters and things in his answer heretofore offered in this case and adopting the same as part of this his amended answer, further answering, saith that it was no part of his intention to refuse to answer to, or to evade an answer to, any allegation of the complainant's bill. Having had no personal agency
223 in conducting the business of the house of Selden, Withers &
Co., this respondent had no personal knowledge of the state of accounts between the parties, and could not therefore answer categorically to all of the allegations of the bill; but this respondent will now, as far as it is in his power so to do, endeavor to respond to those allegations of the bill that concern the exceptions taken to the former answer and sustained by the court.

As to Exhibits B & C, this respondent again says he has no personal knowledge whether they do or do not contain true statements of the bonds delivered, and the money paid under the contract, a copy of which is alleged to be contained in Exhibit A; but the case has now been reported upon by the commissioners of the court, and the said exhibits have been reported as containing true statements, and this respondent is willing to admit the same.

Exhibits E & F are presumed to be true copies of the instruments of which they purport to be copies, and this respondent admits
224 the same, but this respondent cannot say whether Exhibit G
shows the true balance of the indebtedness that it purports to show. This respondent, as already stated in his former answer, was no party to the suit in which the settlement, evidenced by the said exhibit, was made, and had no agency in effecting that settlement. He has been informed and believes that the books of the firm do not contain the information upon which that settlement was made,

but that the result was reached partly by what appeared on the said books, partly by what appeared on the books and vouchers of the complainant; partly upon information derived from other sources, and partly by agreement and compromise. It may be true, as complainants say, that the settlement was liberal on the part of the complainants and favorable to the associates of this respondent, but this respondent cannot say whether such is the fact. The books of the firm were so kept that it is impossible from them, to state a true account of the dealings herein sought to be inquired into, and this respondent has no

225 means in his power of supplying the deficiency, *and this respondent has no means in his power of supplying the deficiency*, and this respondent has never directly or by agent assented to the said settlement, and does not know whether the same is just and correct, and he cannot point out any errors that may exist, or say wherein it is not just and correct. He has neither the personal knowledge nor the means in his power to enable him to do so.

This respondent, further answering, says that he was never served with process in the suit depending in the District of Columbia, nor has ever formally appeared to the same. His counsel, Mr. Wylie, has, as he believes, from time to time examined into the progress of that case, and conversed with this respondent touching those proceedings, but he does not know whether this constitutes him a party or not. He is advised that upon those facts it is more properly a question of law for the court to decide than a *question of law for the court to decide than a* question of fact to be responded to by answer.

And this respondent, having fully answered, prays hence

226 to be dismissed with his costs, &c.

JNO. WITHERS.

Sworn to in open court this 26th day of May, 1860.

R. A. SINCLAIR, *Clerk.*

Pl'ff, by counsel, excepts to the amended answer of John Withers upon the following ground:

In his original answer he states facts obtained upon information of others as to premiums paid upon bonds sold, which could only have been obtained upon access to books, or as derived from them; and yet, in his amended answer, he declines still to say whether the credits to the pl'ff are correct, and whether he is entitled to any other credits than those granted to his firm in the Exhibit (G.)

We are entitled to know from a partner with access to the books, whether the account so filed be correct, and to have it admitted without evasion, or the particulars pointed out in which it is incorrect.

227 And for this cause we object to leave to file the original or amended draft of answer offered to be filed as the answer to the bill in the case.

Respectfully,

BOARD OF PUB. WORKS,
By TUCKER & TAYLOR,
Attorneys.

MAY 28, 1860.

Commissioner's report.—Filed April 20, 1860.

COMMISSIONER'S OFFICE,
Alexandria, April 10, 1860.

THE BOARD OF PUBLIC WORKS OF VIRGINIA
vs. } In chancery.
SELDEN, WITHERS & CO., ET AL.

To the circuit court of Alexandria County:

The order of reference of November term, 1859, in this cause directs the commissioner to ascertain and report—

228 1st. What amount is due upon a settlement of the accounts
between the complainant and the late firm of Selden, Withers &
Co., referred to in the bill and proceedings in this cause.

2d. What balance, if any, is in the hands of the defendants English and Bayne, trustees under the deed of trust of November 29, 1854, from Selden, Withers & Co. to them; what assets, conveyed to them by the said deed of trust, remain uncollected; the character and marketable value of such assets, and the probable amount which will be realized from the same; but, in stating said account, the said commissioner is not required to settle such accounts as may have already been settled by said trustees under the proceedings in the suit pending in the circuit court of the United States for the District of Columbia, in the name of The United States vs. Selden, Withers & Co., but taking such
accounts so settled as correct, shall state and settle so much only
229 of the accounts of the said trustees as has not heretofore been
settled by them in the said suit; and the said commissioner is
authorized, in settling said accounts, to summon the parties to appear before him, &c.

Pursuant to which order the notice herewith returned, marked A, was given; and on the 16th day of January last, the day appointed, the audit was commenced, and has been continued since from day to day.

Lawrence B. Taylor, esq., one of the counsel for the Board of Public Works; the trustees, Mess. English and Bayne; and S. Chilton, esq., have attended before your commissioner, and the books and papers of the late firm have been at your commissioner's command. Mr. Withers was also present on the day the audit was commenced.

1. The first enquiry directed is as to the debt due the board of public works.

Your commissioner reports that the debt due from the late firm
of Selden, Withers & Co. to the board of public works of
230 Virginia, with interest to the 1st April, 1860, is $513,615.29, of
which sum $131,317.14 is interest.

A statement in detail of this indebtedness will be found in Schedule B, herewith returned.

2. The second enquiry directed is as to the balance in the hands of the trustees, &c.

Your commissioner reports that the balance in the hands of the trustees, English & Bayne, on the 17th of January, 1860, was $657.57. A statement in detail is herewith returned, marked T. Proper vouchers for disbursements were exhibited by said trustees.

Your commissioner further reports that the assets in the hands of the trustees uncollected amount to the sum of $476,372.81. Of these, $89,103.82 are reported good; $10,779.67 are reported doubtful; and the balance, $376,489.32, are reported bad. If to the good are added

one-half of the doubtful, the amount will be $94,493.65. A statement
in detail, shewing the amount of said assets, their character
231 and value is herewith returned, marked C. This schedule only
includes the assets in the hands of the trustees. Schedule F,
herewith returned, shews the assets in full belonging to the late
(including the Chesapeake & Ohio Canal bonds held by the board, and
the Brooklyn lots,) amounting to $721,742.96.

It will be observed that the principal part of the amount reported in Schedule C as good, consists of the debts due from Bayne, Withers & Co., and Bayne & Withers, $54,005.37, and the Monsarrat land fund, $20,000. If for any cause these amounts are not realized, the amount of good assets will be comparatively insignificant, not exceeding $15,098.45.

All of which is respectfully submitted.

W. C. YEATON,
Commissioner.

This report and the accompanying exhibits have been retained in my office ten days for the examination of the parties.

W. C. YEATON, *Comm'r.*

AP'L 20, 1860.

232 Time employed by comm'r in examining books, papers, accounts, &c., and stating accounts, schedules, &c., 270 hours, $1, $270.00.

W. C. YEATON, *Comm'r.*

Time employed by comm'r, 270 hours, $270.00; cost of copies from circuit court of District of Columbia, 28.80, 12.27—41.07 = 311.07.

A.

THE BOARD OF PUBLIC WORKS OF VIRGINIA, complainants,
vs.
WILLIAM SELDEN, JOHN WITHERS, LAWRENCE P. Bayne, George W. Carlyle Whiting, and Robert W. Latham, late copartners under the firm of Selden, Withers & Co.; William Bayne, John A. English, Willis P. Bocock, & Andrew Wylie, defendants.
} In equity.

In the circuit court of Alexandria County. November term, 1859.

233 It appearing to the satisfaction of the court that the complainants have proceeded in the mode prescribed by law to mature their cause for hearing, &c., &c., and the court being of opinion that it will be proper to order accounts in the cause, and without now deciding the questions which may be raised by the pleadings on the proofs hereafter to be taken, but reserving them for decision upon the coming in of the report of the master commissioner, doth adjudge, order, and decree that a master commissioner of this court do proceed to ascertain and report the following matters of account.

1. What amount is due upon a settlement of the account between the complainants and the late firm of Selden, Withers & Co., referred to in the bill and proceedings in this cause.

2. What balance, if any, is in the hands of the defendants English &
Bayne, trustees under the deed of trust of November 29, 1854,
234 from Selden, Withers & Co., to them; what assets conveyed to
them by the said deed of trust remain uncollected; the character
and marketable value of such assets; and the probable amount which will be realized from the same; but in stating said account the said master is not required to settle such accounts as may have already been settled by said trustees, under the proceedings in the suit pending in the circuit court of the United States for the district of Columbia, in the name of The United States vs. Selden, Withers & Co., and others; but taking such accounts so settled as correct, shall state and settle so much only of the account of the said trustees as has not heretofore been settled by them in the said suit.

And the said master is authorized, in settling said accounts, to summon the parties to appear before him and to examine them upon oath
touching all matters pertinent to the accounts hereby required to
235 be taken and stated by him, and to state such matters as to him
may seem pertinent or any of the parties may require, &c., &c.

A copy. Test:

R. A. SINCLAIR, *Clerk.*

Notice.

COMMISSIONER'S OFFICE, *Dec.* 7, 1859.

The parties to the foregoing cause, and all others interested, are hereby notified that I have fixed upon Monday, the 16th day of January, 1860, as the time, and my office in the city of Alexandria as the place, when and where I shall proceed to perform the requirements of the foregoing decree; at which time and place you are required to attend.

Given under my hand, as a master commissioner of the circuit court of Alexandria County, the day and year first aforesaid.

W. C. YEATON.

Dec 8—1aw4w.

GAZETTE OFFICE, *Alexandria*, *April* 19, 1860.

The attached advertisement, The Board of Public Works, compl'ts, vs. Selden, Withers & Co., and others, was published in the Alexandria Gazette once a week for four weeks, commencing with the eighth day Dec. 1859.

B. T. PLUMMER,
Bookkeeper Gazette Office.

Fee, $10.

SCHEDULE B.

Selden, Withers & Co., in account with the board of public works of the State of Virginia.

DR.

1855.			Interest to 1 April, 1860.
January 1.	To balance due board of public works, as shewn by the books of Selden, Withers & Co., and is the balance claimed by the board and shewn to be due by their Exhibit G, referred to by Mr. De Witt in his deposition...	$436,874 17	$137,615 36
	Dollars.................	$436,874 17	$137,615 36

1860.			
April 1.	To balance due board of public works	$382,298 15	$131,317 14

Principal	$382,298 15
Interest	$131,317 14
	513,615 29

W. C. YEATON,
Commissioner.

236 CR.

			Interest to 1 April, 1860.
1855.			
Dec. 17.	By cash received from Mess. Bayne & English, trustees of S., W. & Co.	576 02	148 22
1857.			
Nov. 4.	By do. " " do	30,000 00	4,335 00
1858.			
Nov. 3.	" do. " " do	18,000 00	1,524 00
1859.			
June 10.	" do. " " do	6,000 00	291 00
1860.			
April 1.	" balance due board of public works	382,298 15	131,317 14
	Dollars	436,874 17	137,615 36

SCHEDULE T.

Selden, Withers & Co. in account with John A. English and William Bayne trustees under deed of 29th Nov., 1854.

DR.

1858.				
Sept.	15.	To cash paid	F. B. Hayes, bill of costs	$215 00
Octo.	4.	" do.	C. J. Clarke, clerk's fees	7 39
	5.	" do.	R. A. Sinclair, clerk's fees	24 95
	18.	" do.	W'm Redin, auditor's bill	59 80
	29.	" do.	D. Cooper, attorney's bill	200 00
Nov.	3.	" do.	S. S. Baxter, attorney, for board of public works, State of Virginia	18,000 00
237		To cash paid	sheriff of Alexandria County, fees	1 20
		" do.	A. Wylie, attorney's fees	182 37
		" do.	J. A. Smith, clerk's fees	80 64
		" do.	W'm Bayne, for stationary	5 24
	18.	" do.	S. Chilton, attorney's fees	350 00
Dec'r	15.	" do.	Sheriff of Warren County, fees	1 00
	20.	" do.	S. Chilton, attorney's fees	50 00
		" do.	L. Triplett	52 50
		" do.	Marshall Hoover's fee-bills	10 97
1859.				
Feb.	11.	" do.	W. Y. Fendall, att'y for E. D. Drinker, assignee of W'm F. Hereman	20 00
			Interest on same	3 28
	23.	" do.	W'm Bayne's expenses to New York	22 00

Mar. 4.	"	do. Smith Montague, $50, & interest, $12.53	62 53
	"	do. J. A. Faulk, 2 days' attendance at c't.	2 50
June 6.	"	do. Hamilton Pope's fees	35 00
10.	"	do. J. R. Tucker, attorney general of State of Virginia	6,000 00
24.	"	do. Samuel Chilton, att'y's fees	100 00
30.	"	do. R. J. Bowie, att'y's fees	100 00
	"	do. J. A. English, travelling expenses to the West	114 45
238			
Nov. 23.		To cash paid exchange on check remitted N. Y.	53
Dec. 6.	"	do. R. A. Turner, fees & taxes in suit o' Armistead	26 50
1860.			
Jan'y 18.	"	do. James S. Rogers, for writing	35 00
	"	commission of 5 per cent. on receipts $6,449.78.	322 48
	"	balance per contra	657 57
		Dollars	26,742 90

Cr.

1858.			
Sept. 14.		By balance in hands of trustees, as per Auditor Redin's report	$20,293 12
Oct. 4.	"	interest, exchange, &c., rec'd at different times.	$600 00
	"	cash rec'd of Andrew Wylie, att'y	1,588 23
Nov. 3.	"	do. do.	1,136 84
	" "	⅜ per c't. prem. on do	4 26
	" "	of Andrew Wylie, att'y	332 60
	" "	" A. Green, auct., ac. of lot sold	510 54
	" "	⅜ per c't. prem. on do	1 91
25.	" "	of H. O. Claughton, am't R. A. Johnson's check, favor Miller, & check & protest	1,201 95
	" "	of do. interest on same	224 38
1859.			
Jan. 23.	" "	Walker's note, paid	247 21
	" "	ac. of R. W. Latham	7 00
239		By cash rec'd, ½ per cent. on $12,000 specie funds sold	60 00
June 6.	" "	of Hamilton Pope, att'y	534 86
		Dollars	$26,742 90
1860.			
Jan. 18.		By balance in hands of trustees	$657 57

W. C. YEATON,
Commissioner.

SCHEDULE C.

Assets of Selden, Withers & Co., in hands of trustees, J. A. English and William Bayne, Jan'y 16, 1860.

Name.	Debt.	Good.	Doubtful.	Bad.
Bartlett Smith, (1)	56			56
George F. Comstock, (1)	1 75			1 75
Maurice O'Conner, (1)	2 00			2 00
Robert Clarke, (2)	3 75			3 75
C. S. Wallach, offset,	5 25			5 25
B. T. Ingraham, (1)	9 67			9 67
E. Harte, (2)	11 00			11 00
240 I. Jamieson, in hands of E. J. Lee, att'y	17 95			17 95
George French & Co., (2)	22 86			22 86
William Perry, died intestate	25 95			26 95
R. H. Weightman, (2)	29 32		29 32	
F. M. Blount	35 00			35 00
E. P. Miller, A. Wylie, att'y	62 18			62 18
J. C. G. Kennedy, (3)	80 54			80 54
J. R. Wallace, Brent & Kruzer, att'ys	90 00		90 00	
Byers & McKnew, (1)	129 72			129 72
John A. Linton, offset	255 03			255 03
Beverly Tucker, in suit	201 28			201 28
G. L. Thompson, Chilton & Wylie, att'ys	174 89			174 89
Jackson Morton, A. Wylie, att'y	163 44			163 44
V. Willett, Chilton & Wylie, att'ys	370 00	370 00		
Stevens & Co., A. Wylie, att'y	1,508 92			1,508 92
Estate of James French, (4)	748 43	748 43		
B. O. Sheckell & Co., S. Chilton, att'y	2,716 09			2,716 09
J. A. Noonan, disputed	2 45			2 45
Peter Smith, (1)	28 84			28 84
R. L. Armistead & others, S. Chilton, att'y	1,800 83			1,800 83
G. W. C. Whiting, one of the firm,	4,472 47			4,472 47
Lawrence P. Bayne, do., protest, p. 75	16,461 75			16,461 75
241 Lawrence P. Bayne, do	3,963 34			3,963 34
Forward	$33,395 26	1,118 43	119 32	32,157 51

(1.) The trustees report that these parties cannot be found or are insolvent.

(2.) In the hands of John L. Smith, for collection, but generally believed to be worthless.

(3.) Disputed, and the trustees report they are advised they have no case.

(4.) In the hands of Scott & Turner, and the trustees think the debt will be collected.

	Debt.	Good.	Doubtful.	Bad.
Forward	$33,395 26	1,118 43	119 32	32,157 51
R. W. Latham, one of the firm, (1)	8,338 48			8,338 48
Do.	4,314 83			4,314 83
Do.	2,166 34			2,166 34
Do.	410 34			410 34
Do.	108 25			108 25
R. W. Latham, agent of the Trans-Alleghany Bank	164 92			164 92
R. W. Latham, pension agent	11,732 08			11,732 08
242 R. W. Latham & Co	24,007 47			24,007 47
Do. $100,000, int. 3,066.66	103,066 66			103,066 66
Monsarrat land fund, (2)	21,170 00	20,000 00		1,170 00
Forward	$208,874 63	21,118 43	119 32	187,636 88

(1.) Auditor Redin credits Mr. Latham's indebtedness as follows:

63,500 canal bonds, at 36	$22,860 00
Texas bonds	29,859 43
Carter's debt may yield	6,000 00
Mr. Actor's	1,000 00
St. Paul lot	2,500 00

Furniture & interest in house and lot beyond the 1st mortgage, say	3,000 00
Collections by the trustees	4,800 00
Total of	$70,019 43

Applicable to Mr. Latham's debt due to the firm as of 29th Nov., 1854.

The auditor then puts down the debt as follows: $70,019.43 as good;
$86,824.34 as bad. The book' furnished me by the trustees con-
243 taining a list of the assets of the firm do not show any credit to
Mr. Latham on account of this indebtedness. I have therefore put down the full amount of the indebtedness as bad. The object of the reference being to ascertain the amount of good assets in the trustees' hands applicable to the complainant's debt, this mode of treating said indebtedness will effect the result, as whatever has or may be received from the assets aforesaid by the trustees, will lessen the *the* amount of bad debts reported by me just so much. $15,930.00 of the bonds of the Chesapeake & Ohio Canal Company held as collateral security by the board, from Selden, Withers & Co. are doubtless a portion of the canal-bonds mentioned by Mr. Redin. (See Complainant's Exhibit F.) The lot at St. Paul will be put down among the assets at its supposed value.

(2.) The explanation given by the trustees of this land-fund is—

It is an interest in land in connection with Monsarrat and
244 others in Ohio, Indiana, and Illinois on the line of the Ohio and
Mississippi Railroad, the titles to which were held in the names of Hall and Cochran. Monsarrat held two-tenths; Selden, Withers & Co. purchased one-tenth from him, $15,000. When Mr. Selden sold out his interest in the bank to Mr. Whiting, he retained an interest equal to $3,000 in this land-fund which the bank afterwards purchased of him for $6,000, thus making their entire advance $21,000. The trustees state that it has been subsequently ascertained that the lands were covered by prior mortgages and liens fraudulently created by Hall & Cochran, to the full value of the lands. They have the matter in the hands of Worthington and Mathers, attorneys, Cincinnati. Mr. English, one of the trustees, thinks the claim, or the great*i*st part of it, will be ultimately realized. I have therefore put it down as good for $20,000.

245	Debt.	Good.	Doubtful.	Bad.
Forward	$208,874 63	21,118 43	119 32	187,636 88
Metropolitan Railroad stock	100 00			100 00
Union Plank or Turnpike Comp'y	1,000 00			1,000 00
Chesapeake & Ohio Canal Bonds (1)	15,000 00	2,400 00		12,600 00
Union Coal & Iron Company (2)	23,531 50			23,531 50
C. W. Purcell & Co., (disputed)	5 00			5 00
" special claim against Sutton.	324 88			324 88
Bank of Commerce, Georgetown, D. C. (in suit)	331 70			331 70
John Thompson (3)	19,775 89			19,775 89
Sturgis & Ellis (judgment)	22,092 40			22,092 40
John G. Camp "	14,975 33			14,975 33
Lawrence P. Bayne's note	8,568 06			8,568 06
Forward	$314,579 39	23,518 43	451 02	290,609 94

(1.) From the best information I have been able to obtain, the bonds of the Chesapeake & Ohio Canal Co. are worth, at this time, 16 cents on the dollar.

(2.) The original subscription was $20 per share. An assessment of $3,531.50 was made for improvements, which brought the cost to 246 the sum stated. The purchase was made of Monsarrat. Mr. English has been out to look after the property, and reports that the land is mostly slate land, and the whole concern worthless. All the stock of horses, improvements, &c., had been sold under execution, out of which he contrived to obtain a debt of $4,600. The company is broken up.

(3.) This grew out of a contract to circulate prohibited notes and to purchase canal-bonds. The original debt was $38,941.00. Of this the trustees have collected $19,165.11, leaving due $19,775.89, which is reported bad.

	Debt.	Good.	Doubtful.	Bad.
Forward	$314,579 39	23,518 43	451 02	290,609 94
Duff Green & Benj. E. Green, int. 3,189 37 192 93	3,382 30		3,382 30	
Evan Hughes (1)	367 31	200 00		
Sturges & Ellis, judgment	15,000 75			15,000 75
D. F. Disney, A. Wylie, att'y	600 00			600 00
G. Walton "	55 00			55 00
Benjamin E. Green, S. Chilton, att'y	100 00			100 00
L. Maynard, agreement in suit	1,134 00		1,134 00	
Beverly Tucker, S. Chilton, att'y	1,193 26			1,193 26
W. H. Shirley	1 75			1 75
247 J. H. Steele, A. Wylie, att'y 100 350	450 00			450 00
E. P. Miller	1,300 00			1,300 00
J. M. McVeigh, B. P. Noland, att'y	20 00			20 00
J. J. Miller, A. Wylie, att'y	229 13			229 13
Gideon M. Ayres, "	250 00			250 00
W. Handy, "	15 08			15 08
A. J. Marshall, "	50 00			50 00
J. J. Roane, "	12 45			12 45
A. W. Thompson, balance due	876 56			876 56
John A. Corwin's draft, accepted by T. F. Schenck, endorsed by D. F. Disney, in suit	302 00		302 00	
Nathan Hale, balance	10,217 63			10,217 63
John V. Hamtramck, judgment	2,001 75		2,001 75	
John K. White, E. J. Lee, att'y	271 85			271 85
Edward Home, "	2,000 00		2,000 00	
R. L. Armistead, Mason, att'y	150 00			150 00
John B. Floyd, in suit	1,011 75	1,011 75		
J. H. Stone & W. J. Madeira, in suit	101 50			101 50
J. S. & L. Reed	150 00			150 00
G. H. Monsarrat & Co.	2,502 00			2,502 00
248 G. H. Monsarrat & Co., judgment, (2)	18,008 90			18,008 90
A. E. Carroll, balance in suit	1,409 00			1,409 00
Sherrard Clemens, judgment	103 25		103 25	
P. B. Key	301 70			301 70
John Lee, endorsed by G. C. Washington $701 75 501 75 G. C. Washington, endorsed by John Lee 201 85	1,405 35		1,405 35	
Edw'd Harte, in hands of J. L. Smith	21 62			21 62
A. Hyatt Smith, in suit	942 00			942 00
Forward	$380,517 28	24,730 18	10,779 67	344,840 12

(1.) Mr. Wylie reports this balance good.

(2.) Auditor Redin states that the trustees held, as collateral security, the Hilburn Railroad bonds for $48,000, in which they receive the interest, but the bonds have no marketable value, and there is a doubt as to the authority to sell them.

(3.) In court of appeals.

	Debt.	Good.	Doubtful.	Bad.
249 Forward	$380,517 28	24,730 18	10,779 67	344,840 12
Claims in A. Wylie', att'y, hands:				
E. J. Middleton	101 75			101 75
Mary Bronaugh	51 75			51 75
Walker & Peck	510 88			510 88
F. Selden & T. C. Donn	488 23			488 23
A. S. H. White	100 00			100 00
W. De Hass	128 75			128 75
W'm H. Shirley	150 00			150 00
John H. Drury, open account	52 48			52 48
A. H. McRae	61 75			61 75
Do	56 15			56 75
Do	61 75			61 75
C. Laurie	93 50			93 50
B. T. Ingraham	26 75			26 75
J. M. Austin	50 00			50 00
Davis & Garrett	303 50			303 50
C. W. Denison	50 00			50 00
E. Harriman	300 00			300 00
Wall & Brown	269 57			269 57
L. Dorsey	25 00			25 00
250 Samuel B. Hickcox	81 75			81 75
W. B. Hart	51 75			51 75
B. L. Bogan	56 75			56 75
E. Yulee	1 75			1 75
Ezekial Young, (1)	802 00	802 00		
A. W. Reynolds	151 95			151 95
W'm Bird	103 44			103 44
E. S. Tate	201 75			201 75
George C. Whiting	203 50			203 50
Do (2)	57 75	130 00		
Charles E. Sherman, (3)	2,469 80	250 00		
A. A. Nicholson	1,844 05	1,800 00		
C. Wendell	765 00			765 00
Do	1,001 75			1,001 75
Thomas Pember	75 00			75 00
T. B. Brown	402 27			402 27
John Brereton	293 40			293 40
Forward	$391,957 35	27,710 18	10,779 67	351,112 59

(1.) Mr. Wylie reports having collected, since last settlement with trustees, $232.40, and balance, $800, good.

251 (2.) Mr. Wylie reports $217 collected by him since last settlement with trustees.

(3.) The trustees' book shews only a credit of $1,100 on this claim. Mr. Wylie reports that the balance due, $250, is good.

	Debt.	Good.	Doubtful.	Bad.
Forward	$391,957 35	27,710 18	10,779 67	357,112 59
B. E. Green	502 00			502 00
Richard M. Young	75 00			75 00
J. C. Lewis	363 25			363 25
M. A. Dexter	175 74			175 74
R. C. Stevens, (1)	1,500 00	300 00		
P. J. Stevens	800 00			800 00
Do.	500 00			500 00
A. J. Harvey	29 54			29 54
Walker & Peck, (4)	401 75			401 75
B. O. Sheckell & Co	4,000 00			4,000 00
Bayne. Withers & Co., (2)				
Interest to 1 Apr. 1860	5,774 53			
Do.	18,499 41			
Interest to 1 Apr. 1860	5,666 95			
Bayne & Withers, protest, $1.75	8,001 75			
Interest to 1 Apr., 1860,	2,445 33			
$58,787.97				
252 Less payments & int, on same, { 3,735.16 1,047.44				
4,782.60		54,005 37		
Lot at St. Paul, Minnesota. Mr. English, trustee, thinks this lot worth from $5.000 to $10.000		5,000 00		
F. P. James, contract Virginia bonds	13,249 54			18,529 45
William Sturgis, special	2,569 54			
J. S. Atwood & John Reber, (3)	710 37			
F. P. James, Virginia bonds 17,000, 15,000	2,000 00			
Balance in hands of trustees	657 57	657 57		
Amount reported by Mr. Wylie to be in his hands	1,430 70	1,430 70		
Dollars	479,710 32	89,103 82	10,779 67	376,489 32

(1.) Mr. Wylie reports that he has received, at different times, from R. C. Stevens $350, and that the claim is probably good for $300 more.

(2.) I have thought it proper to include these claims, although they are
noted on the trustee's books, as charged to Mr. Withers, who claims
253* to be an individual creditor of the firm. Interest is calculated
on the notes from their respective dates of maturity to 1st April,
1860. The credits applied are taken from Auditor Redin's 2d report. The balance is put down as good, supposing Mr. Withers to be solvent.

(3.) The trustees note on their book that these claims have been passed to the board of public works. This is not admitted by the board, and I have not been put in possession of any evidence on the point.

(4.) Some of the claims placed in Mr. Wylie's hands by the trustees and which appear in the foregoing statement, may have been paid, but as they are nearly all put down among the bad debts, the result, so far as the good claims are concerned, will not be varied. The trustees desired me to call on Mr. Wylie for a statement concerning all the claims placed in his hands, remarking that the money paid by him to them on
account of collections, had not been applied to any particular claim
254 but had been credited generally. The statement furnished by Mr.
Wylie is herewith returned. This being the last day the schedule can be kept open, it is too late to get from him any other statement. I will remark that the foregoing schedule is as correct as it could be made from the materials before me. The books and papers furnished me by the trustees have generally been relied on as to the amount and character of the assets. The trustees do not reside here, and I have been at a loss occasionally for information. The schedule, however, I believe to be generally correct, and I think may be relied on fully, so far as the good assets are concerned.

W. C. YEATON,
Commissioner.

F.

Assets of Selden, Withers & Co, in the hands of trustees, J. A. English and William Bayne, on the 17*th of January*, 1860, *including collaterals held by the board of public works.*

255

Bartlett Smith	$	56
George F. Comstock	1	75
Maurice O'Conner	2	00
Robert Clarke	3	75
Charles S. Wallach, attorney	5	25
B. T. Ingraham	9	67
E. Harte	11	00
J. Jamison	17	95
George French & Co.	22	86
William Perry	25	95
R. H. Weightman	29	32
F. M. Blount	35	00
E. P. Miller	62	18
J. C. G. Kennedy	80	54
J. R. Wallace	90	00
Byers & McKnew	129	72
Jackson & Morton	163	44
John A. Linton	255	03

Beverly Tucker		201 28	
G. L. Thompson		174 89	
V. Willet		370 00	
			1,692 14
256			
Stephens & Co.		1,508 92	
Estate of James French, deceased		748 43	
B. O. Sheckell & Co.		2,716 09	
J. A. Noonan		2 45	
Peter Smith		28 48	
R. L. Armistead and others		1,800 83	
			6,805 56
G. W. C. Whitney			4,472 47
L. P. Bayne		3,963 34	
Note, L. P. Bayne, due 1–4 Jan., 1855		10,000 00	
Interest		460 00	
Note L. P. Bayne, due 23–26 Dec., 1854		6,000 00	
Protest		1 75	
			20,425 09
Note, Bayne, Withers & Co. due 5–8 Jan., 1855.		18,400 00	
" do. due 20–23 Feb., "		18,499 41	
" Bayne & Withers, endorsed Bayne, Withers & Co. due 24–27 Feb., 1855		8,000 00	
Protest		1 75	
			44,901 16
257			
R. W. Latham		8,338 45	
R. W. Latham, note due 28–1 July, 1854		4,314 83	
Do. do " 1–4 Aug., "		2,166 34	
Do. note, payable on demand, Mar. 1, 1855	$1,010 34		
Cr. 1856, June 10th, cash	600 00		
		410 34	
R. W. Latham's draft on G. Cassard, Balto., due 1 Dec., 1852		106 25	
Protest		2 00	
R. W. Latham, agent Trans-Alleghany Bank.		164 92	
			15,503 16
R. W. Latham, pension agent			11,732 08
R. W. Latham & Co.			24,007 47
R. W. Latham & Co., note due 1–4 July, 1854.		100,000 00	
Interest		3,066 66	
			103,066 66
Land-fund. G. H. Monsarrat			21,170 00
Metropolitan Railroad Co. stock			100 00
Union Plank or Turnpike Co.			1,000 00
Chesapeake and Ohio Canal bonds			15,000 00
Union Coal & Iron Company, Kentucky, 1,000 shares			23,531 50
C. W. Purcell & Co., Richmond			5 00
Do. special. "			324 88
John Thompson, New York			19,775 89
258			
Bank of Commerce, Georgetown			331 70
Sturgess & Ellis, New York		$24,960 00	
Cr. Ellis & Sturges, Cincinnati, balance		2,867 60	
			22,092 40

F. P. James, contract, Va. bonds				13,249 54
John G. Camp				14,975 33
L. P. Bayne, note dated 29 Jan., 1856, with interest from date			8,568 06	
Duff Green & Benj'n E. Green, due 4 Jan. 1856		$3,189 37		
Interest		192 93		
			3,382 30	
Evan Hughes, due 2 Nov., 1855		367 31		
Interest		5 69		
			373 00	
				12,323 36
Sturges & Ellis, due 10 Nov., 1854			5,000 00	
Protest			75	
Do. due 15 Nov., 1854			5,000 00	
Do. " 20 " 1854			5,000 00	
				15,000 75
D. F. Disney, " 18 Sep., 1854				600 00
G. Walton, " 17 Nov., 1854			55 00	
Benjamin E. Green, 12 Jan., 1855			100 00	
L. Maynard, agreement, say 6 Jan., 1855			1,134 00	
Beverly Tucker, 8 Feb., 1852		$5,000 00		
Costs		16 00		
		5,016 00		
259				
Cr. 30 Nov., 1852	$ 337 74			
1 Apr., 1853	1,640 00			
21 June, 1853	695 00			
29 Aug., 1853	1,150 00			
		3,822 74		
			1,193 26	
				2,482 26
W'm H. Shirley, 4 July, 1852		$35 00		
Protest		1 75		
		36 75		
Cr. Aug. 2, 1852		35 00		
			1 75	
J. H. Steele, 16 Mar., 1853		100 00		
Do. 3 Dec., 1852		350 00		
			450 00	
E. P. Miller, endorsed J. J. Miller, 14 Dec., 1854			1,300 00	
J. M. McVeigh, due-bill 20 April, 1853			20 00	
J. J. Miller, 6 Dec., 1854		402 38		
Cr. 5th March, 1855		173 25		
			229 13	
Gideon M. Ayres, 4 Jan., 1852			50 00	
Do. 4 Feb., "			50 00	
Do. 4 Mar., "			50 00	
Do. 4 Apr., "			50 00	
Do. 4 May, "			50 00	
				2,250 88
W. Handy, 8 March, 1855			15 08	
260 A. J. Marshall, 2 Sep., 1853			50 00	

J. J. Roane, 14 Mar., 1853		12 45	
A. W. Thompson; notes, balance due		876 56	

JEREMIAH DENEL, ATT'Y, URBANA, OHIO.

Draft, John A. Courin, acceptor, F. F. Schenk, drawer, endorsed D. T. Disney, due 26–29 July, 1853	$300 00		
Protest	2 00		
		302 00	

FRANCIS B. HAYES, ATT'Y, BOSTON, MASS.

Drafts, Nathan Hale, acceptor, due 16–19 June, 1854	4,000 00		
Costs	2 50		
Nathan Hale, due 16–19 Aug., 1854	3,000 00		
Costs	2 50		
	11,007 50		

CR.

Jan. 15, 1856, draft for dividend	789 87		
		10,217 63	
			11,473 72

EDMUND J. LEE, ATT'Y, SHEPHERDTOWN, VA.

John V. Hamtramck's note, endorsed Alex. R. Boteler, J. H. Taylor, John R. White, due 3 Mar., 1852		2,000 00	
Protest		1 75	
261 John K. White's note, endorsed Jas. J. Miller, due 13–16 Sep., 1852		269 00	
Protest		2 85	
Edward Horne's note, due 9 July, 1853		2,000 00	
			4,273 60
R. L. Armistead, due 6–9 Mar., 1853, J. M. Mason, att'y		150 00	

NAFF & GILLON, ATT'YS, ABINGDON, VA.

John B. Floyd's note, endorsed A. Chapman, due 20–23 Jan., 1853	$3,000 00		
Protest	1 75		
	3,001 75		
Cr. 25 Nov., 1853	1,990 00		
		1,011 75	

L. S. THOMAS, ATT'Y, NEW YORK.

Notes J. L. & Laura Reed:			
Due 1–4 Mar., 1852	50 00		
Due 1–4 May, 1852	50 00		
" 1–4 June, "	50 00		
		150	
			1,311 75

RILEY & MUIR, ATT'YS, LOUISVILLE, K'Y.

262 J. H. Stone's note, endorsed W. J. Madura, due 8–11 Apr., 1853		100 00	
Protest		1 50	

HAMILTON POPE, ATT'Y, LOUISVILLE, K'Y.

S. F. J. Trabue, acceptors of G. H. Monsarrat, due 30–2 Mar., 1854		2, 500 00	
Costs		2 00	
Draft, W. Tanner, pres't U. Coal & Iron Co., acceptor, G. H. Monsarrat, drawer, due 20–23 Oct., 1854	$2, 652 00		
Protest	2 00		
	2, 654 00		
Cr. 17 Oct., 1855	2, 000 00		
		654 00	
			3, 257 50

Draft, G. H. Monsarrat & Co., on Kramer, Work & Young, Phila., acceptance waived, due 1–4 Sep., 1854	3, 000 00	
Protest	1 88	
Due 1–4 Oct., 1854	3, 000 00	
Protest	1 50	
Due 12–15 Nov., 1854	3, 000 00	
263 Protest	1 38	
Due 1–4 Dec., 1854	3, 000 00	
Protest	1 38	
Due 1–4 Jan., 1855	3, 000 00	
Protest	1 38	
Due 1–4 Mar., 1855	3, 000	
Protest	1 38	
		18, 008 90

RUSSEL & FITZHUGH, ATT'YS, WHEELING.

Sherrard Clemens' note, due 8–11 Ap'l, 1853	100 00	
Costs	3 25	
		103 25

COLEMAN YELLOTT, ATT'Y, BALT'O.

Note, A. E. Carroll, endorsed Tho. K. Carroll, due 1–4 Mar., 1852		$1, 100 00		
Do. do. 1–4 Nov., 1852		1, 639 00		
		2, 739 00		
Cr. 2 Feb., 1853	$550 00			
12 " "	780 00			
		1, 330 00		
			1, 409 00	
				1, 409 00

W. H. MERRICK, ATT'Y.

Note, John Lee, endorsed G. C. Washington, due 1–4 Nov., 1852		700 00	
264 Protest		1 75	
Note, John Lee, endorsed G. C. Washington, 2–5 Oct., 1852		500 00	
Protest		1 75	
Note, George C. Washington, endorsed John Lee, due 1–4 Dec., 1852		200 00	
Protest		1 85	
			1,405 35

RADCLIFFE & KENNEDY, ATT'YS, WASH'N, D. C.

Note, P. Barton Key, due 1–4 Nov., 1854		$300	
Int		1 75	
			301 75

J. L. SMITH, MAGISTRATE, WASH'N, D. C.

Draft, Edw'd Harte on McMichael & Bird, Phila., dated 3 Aug., 1854, at sight		20 00	
Costs		1 62	
			21 62

P. E. STUART, ATT'Y, NEW YORK.

Balance		$ 75	
Note, A. Hyatt Smith, 18 Aug., 1854		940 00	
Costs protest		1 25	
			942 00

265 ANDREW WYLIE, ATT'Y.

Note, E. J. Middleton, endorsed H. Naylor, due 29th Jan., 1852		100	
Protest		1 75	
Note, Mary E. Bronaugh, endorsed J. M. N. Latham, 5–8 June, 1852		50 00	
Protest		1 75	
Draft, Walker & Peck, on Selden, Withers & Co., endorsed W. G. Furr, due 25 Dec., 1851	400		
Protest	1 75		
		401 75	
Note, Walker & Peck, endorsed R. W. Latham & Co., due 21–24 Nov., 1853		508 00	
Interest		2 88	
Bond, F. Selden & T. C. Donn, dated 16th Oct., 1852		488 23	
Checks, A. S. H. White on Selden, Withers & Co., dated 30 Aug., 1851		100 00	
Note, W. De Hoss, endorsed E. S. Terry, due 1–4 Dec., 1852	$127		
Protest	1 75		
		128 75	

Draft, W. H. Shirley, (on his pay.,) due 6–9 Apr., 1853	$25 00	
Do. " due 6–9 May, 1853	25 00	
Do. " due 5–8 May, 1853	75 00	
Do. " due 5–8 June, 1853	25 00	
		150 00
John H. Drury, balance open acc't		52 48
266		
Draft, A. H. McRae on G. J. Ball, ag't, endorsed Ja's M. McRae, due 1 June, 1853	$60 00	
Protest	1 75	
Do., do., do., due 1 July, 1853	55 00	
Protest	1 75	
Note, A. H. McKae, endorsed Ja's M. McRae, 2–5 Aug., 1853	60 00	
Protest	1 75	
		180 25
" C. Laurie, endorsed Eliz. Bacon, due 1–4 July, 1853	70 00	
Protest	1 75	
Due 1–4 Dec., 1853	20 00	
Protest	1 75	
		93 50
" B. T. Ingraham, endorsed R. Crupper, due 30–3 July, 1853	25 00	
Protest	1 75	
		26 75
" J. M. Austin, due 29–2 May, 1853, 50.00		
		50 00
" Davis & Garrett, endorsed A. Rothwell, due 27–30 July, 1853	300 00	
Protest	1 75	
Costs of protest on Davis & Garrett's note, endorsed by J. M. Donn & Bro.	1 75	
		303 50
267		
Draft, C. W. Denison on Gen'l Sam'l Denison, Sackett's Harbor, New York, dated 22 July, 1853, at 1 day sight		50 00
Note, E. Harriman, due 10–13 Sep., 1853		300 00
" Wall & Brown, endorsed Davis & Garrett, due 19–22 Sep., 1853	$265 00	
Interest	2 82	
Protest	1 75	
		269 57
" L. Dorsey, endorsed R. W. Latham, due 7–10 May, 1853		25 00

" Sam'l B. Hickcox, endorsed W. B. Hart, due 10–13 Oct., 1853	80 00	
Protest	1 75	
		81 75
Draft, W. Hart on J. Thomas, due 9–12 June, 1853	50 00	
Protest	1 75	
		51 75
Note, Ezekiel Young, j'r, on G. Myers, N. Y., endorsed Daniel Rowland, dated 28th Nov., 1853, at sight	800 00	
Costs	2 00	
		802 00
" B. L. Bogan, endorsed W'm A. Harris, of Va., due 15–18 July, 1853	$65 00	
Protest	1 75	
	66 75	
Credit	10 00	
		56 75
268		
Note, E. Yulee, endorsed C. E. Sherman, due 6–9 Dec., 1853	100 00	
Protest	1 75	
	101 75	
Credit 2 Feb'y, 1854	100 00	
		1 75
Draft, A. W. Reynolds on F. P. Blair, j'r, endorsed R. P. Stow, pres't, dated 21 Apr., 1853, 1 d. sight	$150 00	
Costs	1 95	
		151 95
Note, W'm Bird, due 24–27 Apr., 1853	$37 44	
Do. " 23–26 June, 1853	33 00	
24–26 May, 1853	33 00	
		103 44
Check, E. S. Tate on Wash'g'n City Savings Bank, endorsed J. J. Miller, dated 24 April, 1854	$200	
Protest	1 75	
		201 75
Note, Geo. C. Whiting, endorsed A. S. White, due 2–5 Jan., 1853	$150 00	
Protest	1 75	
" do. endorsed G. & D. Clark, due 9–12 Oct., 1853,	50 00	
Protest	1 75	
" do. " A. S. White, due 22–25 Oct., 1853	50 00	
Protest	1 75	
		255 25
269		
Note, Cha's E. Sherman, due— 28–31 August, 1853	$1,000 00	

25–28 Sept., 1853	1,000 00		
21–24 Mar., 1853	350 00		
Do., end'd Ja's T. Walker, 18–21 Jan., 1854	116 80		
Interest	1 25		
Protest	1 75		
		2,469 80	
Note, A. A. Nicholson, endorsed, Andrew Hoover, due 23–26 Apr., 1854.	$2,700 00		
Interest	42 30		
	2,742 30		
Credit, Mar. 6, 1855, cash	900 00		
	1,842 30		
Protest	1 75		
		1,844 05	
" C. Wendell, endorsed Sam'l Strong, due 2–5 July, $1,000 00; balance due on it	$765 00		
" C. Wendell, endorsed Walter Howe, Samuel Strong, due 15–18, Jan., 1853	1,000 00		
Protest	1 75		
		1,766 75	
" Thomas Pember, due 30–2 Aug., 1854		75 00	
" T. S. Brown, due 1–4 June, 1854	$400 00		
Interest	2 27		
		402 27	
" John Brereton, endorsed John Hoover & J. L. Peabody, due 4–7 Jan., 1854	$288 57		
270 Interest	3 08		
Protest	1 75		
		293 40	
Note, B. E. Green, due 31 –3 Nov., 1852		502 00	
" Richard M. Young, due 9–12 Nov., 1854.		75 00	
" M. A. Dexter, " 7–10 " 1854		175 74	
" J. C. Lewis, due 2–5 Jan., 1855	$1,100 00		
Credit 12 Jan., 1855. $300			
11 July, 1856. 436 75			
	736 75		
		363 25	
" R. C. Stevens, endorsed R. W. Latham, Stevens & Co., due 21–24 Sep., 1854.		1,500 00	
" P. J. Stevens, endorsed R. W. Latham, due 4–7 Dec., 1854		500 00	
" P. J. Stevens, endorsed R. W. Latham, Stevens & Co., due 12–15 Nov., 1854.		800 00	
A. T. Harvey, due 4 April, 1856.	$27 76		
Protest	1 75		
		29 54	
			15,787 35

" Sam'l B. Hickcox, endorsed W. B. Hart, due 10–13 Oct., 1853	80 00	
Protest	1 75	
		81 75
Draft, W. Hart on J. Thomas, due 9–12 June, 1853	50 00	
Protest	1 75	
		51 75
Note, Ezekiel Young, j'r, on G. Myers, N. Y., endorsed Daniel Rowland, dated 28th Nov., 1853, at sight	800 00	
Costs	2 00	
		802 00
" B. L. Bogan, endorsed W'm A. Harris, of Va., due 15–18 July, 1853	$65 00	
Protest	1 75	
	66 75	
Credit	10 00	
		56 75
268		
Note, E. Yulee, endorsed C. E. Sherman, due 6–9 Dec., 1853	100 00	
Protest	1 75	
	101 75	
Credit 2 Feb'y, 1854	100 00	
		1 75
Draft, A. W. Reynolds on F. P. Blair, j'r, endorsed R. P. Stow, pres't, dated 21 Apr., 1853, 1 d. sight	$150 00	
Costs	1 95	
		151 95
Note, W'm Bird, due 24–27 Apr., 1853	$37 44	
Do. " 23–26 June, 1853	33 00	
24–26 May, 1853	33 00	
		103 44
Check, E. S. Tate on Wash'g'n City Savings Bank, endorsed J. J. Miller, dated 24 April, 1854	$200	
Protest	1 75	
		201 75
Note, Geo. C. Whiting, endorsed A. S. White, due 2–5 Jan., 1853	$150 00	
Protest	1 75	
" do. endorsed G. & D. Clark, due 9–12 Oct., 1853,	50 00	
Protest	1 75	
" do. " A. S. White, due 22–25 Oct., 1853	50 00	
Protest	1 75	
		255 25
269		
Note, Cha's E. Sherman, due— 28–31 August, 1853	$1,000 00	

25–28 Sept., 1853		1,000 00		
21–24 Mar., 1853		350 00		
Do., end'd Ja's T. Walker, 18–21 Jan., 1854		116 80		
Interest		1 25		
Protest		1 75		
			2,469 80	
Note, A. A. Nicholson, endorsed, Andrew Hoover, due 23–26 Apr., 1854		$2,700 00		
Interest		42 30		
		2,742 30		
Credit, Mar. 6, 1855, cash		900 00		
		1,842 30		
Protest		1 75		
			1,844 05	
" C. Wendell, endorsed Sam'l Strong, due 2–5 July, $1,000 00; balance due on it		$765 00		
" C. Wendell, endorsed Walter Howe, Samuel Strong, due 15–18, Jan., 1853		1,000 00		
Protest		1 75		
			1,766 75	
" Thomas Pember, due 30–2 Aug., 1854			75 00	
" T. S. Brown, due 1–4 June, 1854		$400 00		
Interest		2 27		
			402 27	
" John Brereton, endorsed John Hoover & J. L. Peabody, due 4–7 Jan., 1854		$288 57		
270 Interest		3 08		
Protest		1 75		
			293 40	
Note, B. E. Green, due 31 –3 Nov., 1852			502 00	
" Richard M. Young, due 9–12 Nov., 1854			75 00	
" M. A. Dexter, " 7–10 " 1854			175 74	
" J. C. Lewis, due 2–5 Jan., 1855		$1,100 00		
Credit 12 Jan., 1855	$300			
11 July, 1856	436 75			
		736 75		
			363 25	
" R. C. Stevens, endorsed R. W. Latham, Stevens & Co., due 21–24 Sep., 1854			1,500 00	
" P. J. Stevens, endorsed R. W. Latham, due 4–7 Dec., 1854			500 00	
" P. J. Stevens, endorsed R. W. Latham, Stevens & Co., due 12–15 Nov., 1854			800 00	
A. T. Harvey, due 4 April, 1856		$27 76		
Protest		1 75		
			29 54	
				15,787 35

SAMUEL CHILTON, ATT'Y.

Note, B. O. Sheckell & Co., due 3-6 July, 1854.	4,000 00	
		4,000 00
William Sturges, New York, special		2,569 54
J. S. Atwood & John Reber, New York, special...........		710 37
F. P. James, New York, Virginia bonds {$17,000 15,000}		2,000 00

271 BOARD OF PUBLIC WORKS OF VIRGINIA.—COLLATERALS.

Special bonds Chesapeake & Ohio Canal Company..................................	140,000 00	
Interest on same to 1 Jan., 1855............	25,130 15	
		165,130 15
Preferred bonds Chesapeake & Ohio Canal Company..............................	44,500 00	
Coupons on do., 1 Jan'y, 1855, inclusive*....	8,010 00	
		52,510 00
Brooklyn lots, attached & sold by Virginia (1).	cost.	5,764 85
Lot at St. Paul, Minnesota, held by trustees..	cost.	2,500 00
		$690,299 93
Balance in the hands of trustees, Jan. 18, 1860....		657 57
		$690,957 50
Deduct amount improperly put down as due from W. Tanner, president, page 4, the same having been paid......		654 00
		$690,303 50
Chesapeake & Ohio Canal bonds passed to the board of public works and spoken of in Complainant's Exhibit F, as held by the firm of S., W. & Co., as collateral securities for R. W. Latham's & L. P. Bayne's debts, (2)		$27,730 00
		$718,033 50

272 To make the foregoing schedule conform to Schedule C, there must be added $1,430.70 in Mr. Wylie's hands, interest, &c., to be added to notes of Bayne, Withers & Co., &c. The amounts are put down as they appear on trustees' book, with the proper additions and corrections. The assets in full, including Chesapeake and Ohio Canal bonds, would be $721,742.96.

(1.) **BROOKLYN LOTS.** These lots were attached by the board of public works, and, the bill states, were sold for $250, and bought in by the counsel for board, who made an arrangement with the counsel of Selden, Withers & Co. to convey them to a trustee, to be held until a more favorable time for selling, and then to sell and apply proceeds to board.

(2.) From the best information I have been able to obtain, I report the bonds of the Chesapeake and Ohio Canal Company, special and preferred, to be worth at this time about 16 cents in the dollar. 273 At this price the bonds held by the board would bring $39,259.22.

W. C. YEATON, *Commissioner.*

The defendant John Withers excepts to the report of Com'r Yeaton, returned in this cause—

1st. Because the said com'r has reported the debts due from the late firm of Selden, Withers & Co. to the board of public works of Virginia, with int. at $513,615.29, as of the 1st of April, 1860, upon testimony insufficient to prove any such indebtedness. The entries on the books of the firm, from which the com'r has taken the balance, are entries made after the settlement in the suit in New York, and consequently subsequently to the dissolution of the firm, and by persons not authorized to bind the rights of this exceptant; and because the com'r has received evidence of the copy of the contract set forth in Complainant's Exhibit A, when no excuse has offered for not producing the original.

274 2. Because the com'r does not show by his report upon what evidence he has reported part of the assetts in the hands of the trustees as doubtful, and part as bad; no testimony on oath was taken before the com'r on these points, and he seemed to have acted on hearsay evidence only.

3d. Because the com'r has not properly reported upon that part of the order which directed him to report the character and market-value of the assets in the hands of the trustees uncollected, and the probable amount which will be realized from the same.

And at another day, to wit, at a circuit court continued and held for said county of Alexandria on the 26th day of May, 1866—to which day this cause had been regularly continued—

It appearing to the court by affidavit of this date, filed in the cause by the complainant, that Willis P. Bocock and Andrew Wylie, who are trustees in the deed of trust, for the benefit of the complainant, (a copy whereof is filed as an exhibit with the bill,) executed by John 275 Withers, and bearing date on the 24 Jan., 1855, whereby he conveyed to said trustees certain property situate in the city and county of Alexandria, have removed from and reside without this Commonwealth: On motion of the complainant, by counsel, the court being satisfied that it is necessary for the preservation of said property that the legal title thereof should be in trustees resident within the State and subject to the order of the court, doth order and decree that the said non-resident trustees, W. P. Bocock and Andrew Wylie, be, and they are hereby, removed and superceded as such trustees, and that S. Ferguson Beach and James Neeson be, and they hereby, appointed and substituted the trustees in the said deed of trust, with all the rights, powers, and authority, and subject to all duties and responsibilities of the said trustees, Bocock and Wylie, under the said deed of trust, conveying said property, situate in the city and county of Alexandria.

And at another day, to wit, at a circuit court continued and 276 held for said county of Alexandria, on the 2d day of June, 1866, it appearing from the papers in this cause that the defendants John A. English and W'm Bayne, trustees or assignees of the assets of the late firm of Selden, Withers & Co., for the benefit of the creditors of said firm, including the complainants under the deed whereof a copy is

in the papers of the cause, have not, since the year 1860, rendered to this court or any master commissioner thereof any account of their transactions as such trustees and assignees, or of the funds or assets in their hands as such: On motion of the complainants, the court doth adjudge, order, and decree that the said John A. English and W'm Bayne, assignees and trustees as aforesaid, without delay, render to a master commissioner of this court an account of their transactions subsequent to the date of their former transactions heretofore reported in this cause; also of the money, funds, and assets in their hands or control, or which should be in their hands or control, as such trustees, for the benefit of the creditors of said firm, according to the provisions of the deed afore-
277 said; also of the state, condition, and value of any property, rights, and claims vested in said trustees by or under the said deed, or any act or proceeding in pursuance thereof, and already converted into money or otherwise disposed of or realized by said trustees; that the master commissioner take, ascertain, and report in writing to this court the matters aforesaid, as also what creditors of said firm of Selden, Withers & Co., if any, except said complainants, the Board of Public Works, remain unsatisfied by the said trustees, English and Bayne, or otherwise, and if any others, their names and the sums unsatisfied to them, severally, together with any other matter which may be required by any party, or may be deemed pertinent by himself. The master commissioner before proceeding to the execution of this order shall give notice of the time and place of taking the account by advertisement once a week for four successive weeks, in some newspaper published in the city of Alexandria, which advertisement shall be deemed equivalent to personal service of notice.

COSTS.—Complainant's costs, $; defendants' costs, $.

278 STATE OF VIRGINIA,
County of Alexandria, sct:

I, Jefferson Tacey, clerk of the circuit court for the county of Alexandria, in the State of Virginia, do hereby certify that the foregoing is a true transcript from the records and judicial proceedings of the said court, and contains the record and proceedings in a certain cause in chancery depending in the said court, wherein The Board of Public Works of the State of Virginia are complainants, and Selden, Withers & Co., et als. are respondents, with all things touching the same, as fully and wholly as they exist among the records and proceedings of the court aforesaid.

In testimony whereof I hereto set my hand and affix the seal of the said circuit court this 20th day of October, A. D. 1866.

[SEAL.] JEFF'N TACEY, *Clerk, &c.*

279 VIRGINIA, *Alexandria County, ss:*

I, Henry W. Thomas, judge of the circuit court for the county of Alexandria, in the State Virginia, do certify that Jefferson Tacey, who hath given the preceding certificate, is clerk of the said court, and that his said attestation is in due form.

Given under my hand this 27th day of October, 1866.

HENRY W. THOMAS, *Judge, etc.*

280 *Subpœna to answer.—Issued July 24, 1867.*

In the supreme court of the District of Columbia, July 24th, 1867.

THE BOARD OF PUBLIC WORKS OF VIRGINIA, complainants, *against* JOHN A. ENGLISH ET AL., DEFENDANTS. } No. 1010. Equity doc., 8.

The President of the United States to John A., James W., Cave W., & Zeph. English; Ann M. Adams, Peter Lucas, Sally W. Gray, Mary Berry, Ann E. Dulabella, Fielding and Walter Lucas, Mary S. Kalonback, Fielding Long, Elizabeth Madden, John A. Holtzman, W'm B. Holtzman, Rob't B. McCormick, Eliza J. Berry, Sarah C. Drayer, Susan E. Freas, Mary V. Withers, Achsah and Thomas Withers, Mary C. Rankin, Letitia Garrard, Rob't Withers, Mary & Nannie Withers, Margaret Kennerly, Robert Kendrick, Jennette Moseby, John B. Withers, Atta Gulick, and Geo. W. Samson, and Columbia College, defendants:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and
281 answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

"Not to be found.

"D. S. GOODING, *Marshal.*

"AUGUST 21ST, '67."

Order to renew summons.—Filed Sep. 16, 1867.

BOARD OF PUBLIC WORKS *vs.* COLUMBIAN COLLEGE ET AL. } 1010. Equity dock., 8.

The clerk will renew subpœna against Columbian College.

W. S. COX, *Sol'r.*

282 *Summons renewed.—Sept. 16, 1867.*

THE BOARD OF PUBLIC WORKS VA., COMPL'TS, *against* JOHN A. ENGLISH ET AL., DEF'TS. } 1010. Equity.

The President of the United States to the Columbian College, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*.

MEMORANDUM.—That the defendant is to enter its appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

"Served by leaving a copy of the within subpœna at the residence of Professor Fristoe, with his young man, at Columbian College.

"D. S. GOODING, *Marshal*.

"SEPT. 16TH, '67."

283 *Order of publication.—Filed Nov.* 11, 1867.

Supreme court of the District of Columbia.

THE BOARD OF PUBLIC WORKS OF VIRGINIA *vs.* JOHN A. ENGLISH, JAMES W. ENGLISH, CAVE W. English, Zeph. English, Ann M. Adams, Peter Lucas, Sally W. Gray, Mary Berry, Ann E. Lucas, Dullabella Lucas, Fielding Lucas, Walter Lucas, Mary S. Kalonback, Fielder Long, Eliz'h Maddan, John A. Holtzman, W'm B. Holtzman, Rob't B. McCormick, Eliz'h J. Berry, Sarah C. Drayer, Susan E. Freas, Mary V. Withers, Louisa Withers, Achsah Withers, Tho's Withers, Mary C. Rankin, Letitia Garrard, Rob't Withers, Mary Withers, Nannie Withers, Margaret Kennerly, Roberta Kendrick, Jennette Moseby, John B. Withers, Atta Gulick, George W. Samson, & al.

No. 1010. Equity docket, 8.

284 The object of this suit is in part to subject certain real estate in Washington, owned by John Withers, deceased, to sale for payment of his indebtedness to the complainants.

On motion of complainants, by W. S. Cox, their solicitor, it is this 11th day of November, 1867, ordered that the defendants cause their appearance to be entered herein on or before the first rule-day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By order of the court.

Proof of publication.—Filed Jan'y 7, 1868.

OFFICE OF THE NATIONAL INTELLIGENCER,
Washington, Jan. 7, 1868.

We hereby certify that the advertisement of which the annexed is a copy was published in the National Intelligencer for six weeks, commencing on the 14th day of November, 1867.

SNOW, COYLE & CO.
Per JA'S R. ALLEN.

285 *Notice of motion for extension of time for def't Columbian College to answer.—Filed March* 9, 1868.

THE BOARD OF PUBLIC WORKS OF VA.
vs.
THE COLUMBIAN COLLEGE ET AL.
} 1010. Equity.

WALTER S. COX, Esq.,
Solicitor for Compl't:

Take notice that I will this day make application to the supreme court of this District, in equity, for an extension of time of one month for the filing of the answer of the Columbian College in the above-entitled cause.

W. D. DAVIDGE,
Sol'r for the Columbian College.

MAR. 9, 1868.

Service acknowledged, and I consent that the application be submitted to the court.

W. S. COX,
Sol'r for Compl't.

MAR. 9, 1868.

286 *Order for def't Columbian College for leave to file answer.—Filed March* 9, 1868.

BOARD OF PUBLIC WORKS OF VA.
vs.
ZEPH. ENGLISH ET AL.
} 1010. Eq. dock., 8.

On motion of the solicitor of the Columbian College, a defendant in the above-entitled cause, it is ordered this 9th day of March, 1868, that the said defendant have leave, without prejudice, to answer the bill in said cause on or before the 9th of April, 10 o'clock a. m.

By order of the court.

287 *Answer of Columbian College.—Filed May* 6, 1868.

To the supreme court of the District of Columbia in chancery:

The answer of the Columbian College, in the District of Columbia, to the bill of complaint of the Board of Public Works of Virginia.

This respondent, saving all benefit of exception to the manifold errors, uncertainties, and imperfections in said bill contained, for answer thereunto or unto so much and such parts thereof as this respondent is advised it is necessary or material to make answer, answering, says:

This respondent admits that, in the year 1852, and theretofore, William Selden, John Withers, Robert W. Latham, and Lawrence P. Bayne were engaged in the city of Washington, in this District, in the business of banking, under the name and firm of Selden, Withers & Co., and that, in June, 1852, George W. C. Whiting became a partner in said firm, 288 and that thereafter the firm retained the same name, but this respondent denies that said William Selden retired from said firm as alleged, and on the contrary, avers, on information and belief, that said Selden continued to be a member of said firm, and was such

when the said indebtedness to the complainant was contracted, and when the failure of said firm took place. And to the non-joinder by complainant of said William Selden as well as the said Robert W. Latham, Lawrence P. Bayne, and George W. *P.* Whiting as defendants to this bill, this respondent claims the same benefit from this his answer, as if he had specially pleaded such non-joinder. Further answering, this respondent believes that, about July, 1853, the complainants contracted with said firm to sell certain bonds of the State of Virginia, and that, in pursuance of said contract, said bonds were deposited with said firm at different times, and that, in Nov., 1854, said firm became insolvent, and that, on the 29th of that month, the alleged members executed an assignment, purporting to convey the partnership assets to John
289 A. English and William Bayne, in trust, to make distribution
thereof as directed by said deed. This respondent has no knowledge of the amount of bonds deposited by the complainant with said firm, nor of the indebtedness of the latter at the time of their failure, but is informed and believes said indebtedness was considerable, and insists that the same was due by the members of said firm jointly. And as to the provisions of said deed of assignment as well as of the alleged deed of trust from said John Withers to W. P. Bocock and Andrew Wylie, conveying certain property in Virginia, this respondent refers to said deeds, when the same or duly-authenticated copies thereof shall be produced by the complainant.

Further answering, this respondent is informed and believes that, in January, 1856, the United States filed a bill in equity in the late circuit court, alleging the insolvency of said firm, and claiming priority of payment out of the social assets conveyed, as aforesaid, to English and
290 Bayne, and that said priority was sustained, and sundry decrees
rendered in relation to the distribution of said assets as between different creditors claiming the same, but this respondent denies, on information and belief, that in said cause any decree was ever rendered against any of said partners, and to so much of the bill as seeks relief upon the ground of said proceedings, this respondent claims the same benefit by this answer as if he had specially demurred to such part of the bill for uncertainty.

And, further answering, respondent admits that, on or about the 2d of September, 1858, the complainant filed a bill in the circuit court of Alexandria County, in the State of Virginia, against said partners and said trustees, English and Bayne, and said other trustees, Bocock and Wylie, and for the proceedings in said cause, this respondent refers to a duly-authenticated copy of the record thereof. And as respects the alleged decree, this respondent is advised that the same is on its face interlocutory, and further shews that an appeal from the
291 same was prayed by said John Withers, and that, upon the hear-
ing by the court of appeals of Virginia of said application for appeal the said decree was declared by said court of appeals to be interlocutory, only as will appear by the order of said court now on file, and this respondent relies upon said order passed by the court of last resort of said State, as conclusively establishing the character of said decree; and for the omission to state the said proceedings in the court of appeals of Virginia, as well as for other reasons, this respondent denies that Complainant's Exhibit No. 1 is a true transcript of the proceedings in said cause.

But, further answering, this respondent says that, on or about the 27th of December, 1854, the complainant impleaded the members of said firm of Selden, Withers & Co. in the supreme court of the State of

New York for the county of New York, in an action at law founded on the contract alleged in this bill, in which action judgment was rendered by said court on or about the 2d of May, 1857, against the mem-
292 bers of said firm for $502,140.60; and respondent shews that at and before said action the said John Withers was a citizen and resident of the State of Virginia, and further that said John Withers was not subject to the jurisdiction of said court, and was not served with process in said action, and did not appear therein in person or by attorney, and that likewise William Selden was not served with process in said action, and did not appear therein, but that Lawrence P. Bayne and Robert W. Latham were served with process in said action, and that the said George W. C. Whiting voluntarily appeared therein by attorney, and that as to said Bayne, Latham, and Whiting, the said court had jurisdiction both as to persons and the cause of action; wherefore respondent is advised that inasmuch as the said court was a court of competant jurisdiction, having authority over the said parties as well as the cause of action, the judgment being valid as against the parties who were served with process, or appeared in said action, was a
293 merger and extinguishment of the said cause of action, and in law operated to discharge the said John Withers; and this respondent prays the same benefit from this his answer as if he had specially pleaded the proceedings in said action in bar to the complainant's bill; and for said proceedings he prays leave to refer to the copy of the exempli'cation of said proceedings contained in Complainant's Exhibit No. 1.

And this respondent further shews that by the law of the State of New York, in force at the bringing of said action and rendition of said judgment, the said judgment operated the merger and extinguishment of the causes of action on which the same was founded in respect to the said John Withers; and this respondent prays the same benefit of this defence as if the same was specially pleaded in bar of the relief sought by said bill.

And this respondent further shews that by the law of said
294 State, in force when said action was brought and judgment recovered, the plaintiff in a suit against several joint debtors was, on service of process against any one allowed to have judgment, not only against the party served with process, but also against the other joint debtors not served; but that said judgment, whilst it bound the social property, and also the person and private property of the party served with process, forever discharged from liability the person and private property of any joint debtor not served with process; and respondent is advised that by virtue of said law the judgment aforesaid was in law an election on the part of the plaintiff to pursue only said social assets and the private property of such defendants as were served with process, or who voluntarily appeared, and operated the absolute discharge of the private property of the said John Withers; and respondent claims the same benefit as if said defence had been specially
295 pleaded in bar to this bill.

And respondent is further advised that even if said judgment, by the law of the State New York, bound as well parties not served with process as those served, or who voluntarily appeared to the action, yet that said law could have no extra-territorial operation, and that in other States such judgment would be a mere nullity in respect of parties not served with process, and not voluntarily appearing, though valid in respect of such as were served or voluntarily appeared, and that being valid as to the latter, and invalid as to the former, the legal consequence of extinguishment in the case of a joint demand would equally follow.

And respondent shews that the defence of a discharge, by virtue of
the law of New York, and the judgment thereunder was set up by the
said John Withers, in the said suit, instituted in the circuit court
296 of Alexandria County, and was a main ground of the appeal
prayed as aforesaid, and refused because the decree was interlocutory only.

Further answering this respondent admits that said John Withers, about the year 1860, removed from Alexandria to the District of Columbia, and there resided until his death, in November, 1861; that in 1859 he made his will, but that the same was not witnessed, and hence by the law of this District was insufficient to pass other than personal estate; that by said will Zephaniah English, James Withers, and Robert McCormic, were appointed executors, and that said will duly admitted to probate by the orphans' court of this District. For the contents of said will respondent refers to a duly-authenticated copy thereof, when the same shall be produced.

Respondent further admits that on the 18th of April, 1863, letters
testamentary of the personal estate of said John Withers were issued by
said court to said Zephaniah English, and that under said letters
297 he possessed himself of certain personal property of said testator,
for the character and extent whereof this respondent refers to accounts of said English in said orphans' court, and the report of auditor in the chancery cause hereinafter mentioned, instituted for the administration of said estate.

Respondent further admits that on the 16th of October, 1865, a bill
was filed in this court by this respondent and others, legatees and next
of kin of said John Withers, against said executor, praying the administration of the personal estate of said John Withers, and that upon the
filing of the answer of said executor said cause was referred to the auditor of this court, with directions to take an account of said personal
estate, and of all debts due by said testator, theretofore exhibited or to
be exhibited under said reference, and of the balance of said estate distributable among said legatees and next of kin; and that the report of
said auditor in pursuance of said directions, having been filed,
298 this court on the 7th of April, 1866, passed a decree ratifying said
report, and ordering distribution among said legatees and next of
kin, according thereto. And for the particulars of said proceedings this respondent refers to an authenticated copy of the record of said cause when the same shall be filed by the complainant.

And to so much of said bill as undertakes collaterally to impeach the said decree for fraud, this respondent claims the same benefit as if he had specially demurred to said bill therefor.

And with respect to the distribution by said executor, this respondent
says that the same was made, but that the legacy of James Withers,
mentioned in said will, having lapsed, as will appear by said auditor's
report, it was by this respondent deemed just, and according to the
moral intent of the testator that said legacy should be paid, and that
after contribution of the proportionate share of this respondent towards
said legacy, and payment of counsel fees and commissions there
299 were received by this respondent $6,773.24, cash, and stocks and
bonds not exceeding in value $11,000, at their market-rate.

Further answering, respondent is informed and believes that said executor had notice in fact neither of the alleged proceedings in the cause in the late circuit court of this District, nor of the pretended decree in

the cause in the circuit court of Alexandria County, and denies that, in the first-mentioned cause, there ever was a decree of which the said executor was bound in law to take notice, and that in the latter cause there ever was a final decree; and respondent charges that the complainant has fraudulently withheld, well knowing the same, the order of the court of appeals of the State of Virginia determining that said decree was merely interloc'tory, and hence was not the subject of an appeal. Respondent further denies that said suit in this court was instituted with knowledge, on the part of this respondent, of the just claims
300 of the complainant, and the same was hurried through to a conclusion with a careful avoidance of publication, and with design to effect a distribution so as to defeat said claims, and that said executor withheld any information which he possessed, record or otherwise, in relation to said claims, and that he pretended there were defences against said claims which he did not believe to exist, and that he failed to present to the auditor fairly and fully all he knew in relation to said pretended claims.

On the contrary, this respondent shews that, acting as the president of the Columbian College, and impelled by the pressing necessities of that institution, he repeatedly applied to said executor for the legacy bequeathed to it, as did also, as respondent is informed and believes, others entitled to or interested in legacys under said will; and that to such applications said executor uniformly refused to accede unless fully protected, which full protection he was advised by counsel, as respondent is informed and believes, could only be afforded by the decree
301 of this court in chancery. These refusals led to the filing of the bill for administration about four years after the death of the testator. The said executor had, on receiving his letters, published for all creditors to present their claims, as required by law, and he had further retained the estate for four years after the death of said testator, although, as respondent is informed and believes, the utmost limit allowed by law when the creditor is a non-resident of this District is three years.

It was known that said John Withers, out of his private means, had made provision for said claim to the extent of largely upwards of $350,000, partly by means of the deed above mentioned to Bocock and Wylie and another deed of trust to the same parties for real estate in and around St. Louis, Missouri, and partly by the payment of debts due by the firm and entitled to priority under the aforesaid deed of trust to English and Bayne; and that down to his death he denied the exaggerated pretensions of the complainant, and claimed large credits and deduc-
302 tions in account, and it was equally known that, in the opinion of eminent counsel, the aforesaid judgment, recovered in the supreme court of the State of New York, operated and was claimed by said John Withers to operate an extinguishment of liability of said Withers theretofore existing. No claim had been exhibited, and any pretence of claim had been disputed and resisted by the testator in his life-time, and upwards of ten years had elapsed since the right of action accrued. Under these circumstances the bill was filed. And as respects publication, this respondent shews that the same was given not only by the said executors as aforesaid, but by the auditor upon said reference, as will fully appear by his said report. And this respondent further shews that said reference was made on the 21st of November, 1865, and the report filed in this court on the 27th of February, 1866, and that said decree for distribution was not passed until the 7th of April, 1866, a period of near six months from the 16th of October, 1865, the date of the filing of said bill.

303 And, further answering, this respondent is advised that the complainant is not entitled to follow the legacy paid to respondent as aforesaid because paid in pursuance of a decree of a court of competent jurisdiction, and respondent claims the same benefit as if he had specially pleaded said decree in bar of the relief sought by the bill in respect to said legacy.

And respondent further shews that, by the statute in such case made and provided, in no case can an executor retain for a claim due a non-resident of this District for a longer period than three years from the death of the testator, and that when said retention has been made, and within said three years, there has been no demand and no suit brought, if said demand be rejected, said claim is forever barred; and further, that, by the said statute, whenever a claim is disputed, and the creditor shall not within nine months from said dispute commence suit, said creditor is declared to be forever barred, which provisions of the 304 statute this respondent relies upon in bar of any relief sought by the bill, and claims the same benefit as if the said provisions had been severally and specially pleaded.

And to so much of said bill as seeks to impeach said decree for fraud, this respondent says that the same is uncertain, in not pointing out specifically wherein the alleged fraud consisted; and respondent claims the same benefit as if the bill had been specially demurred to therefor.

Further answering, this respondent denies, on information and belief, the alleged debt claimed by the complainant, and calls for full proof thereof; and respondent is informed and believes that the said firm, in part settlement with the complainant, transferred the bond of Atwood and Reber, of New York, for $100,000, with interest from November, 1854, which bond had been taken by said firm on the sale to said parties of some of said bonds of the State of Virginia, and that at the time of said transfer, said Atwood and Reber were in good credit, but sub-305 sequently failed, and on such failure the complainant pretended said bond was taken as a collateral only and not, as the fact was, in part payment. And further, that the complainant received from said firm Chesapeake and Ohio Canal bonds, amounting, with coupons, on the 1st of January, 1855, to upwards of $220,000, and that complainant used or lost part of said bonds during the rebellion, amounting to about $50,000, and now holds the residue; and further, that the complainant further received from said firm the note of William Sturgis, of New York, for $111,000, and secured by bonds of the Hillsborough and Cincinnati Railroad Company, amounting to $100,000, and that early in 1861 said Hillsborough and Cincinnati Railroad Company was merged in a new company, and stock issued to retire the bonds of the former company, and that the said bonds securing the said note of Sturgis, were delivered to said new company and stock issued thereupon, and that said stock so issued was then, or shortly after, at par, or 306 nearly so, and that for the payment and securities made and transferred as aforesaid the complainant has wholly failed to account. And respondent is further informed and believes that other payments have been made and securities transferred by said firm, or in behalf thereof of the complainant, for which the latter has wholly failed to account; and that said trustees, English and Bayne, have paid to complainant upwards of $60,000, and that the complainant, by the aforesaid deeds to Wylie and Bocock, hold' as security for any balance due the private property of said John Withers, worth not less than $250,000. And respondent is advised and so charges, that the complainant should account for the payments aforesaid and exhaust the collateral securities transferred by the firm and said John Withers before being allowed to maintain this bill.

And respondent further says that if the complainant ever had any cause of action or suit against this respondent for or concerning 307 any of the matters in said bill mentioned, which respondent in no sort admits, such cause of action or suit did accrue or arise above three years before the filing of said bill, nor did this respondent or said executor of John Withers at any time, within three years before said bill was exhibited, promise or agree to come to any account for, or to make satisfaction or pay any sum or sums of money for or by reason of the said matters charged in said bill. And respondent is informed and believes that, in the month of November, 1854, and after the failure of said firm of Selden, Withers & Co., and after the right of action had accrued against said firm and the members thereof, the officials constituting the body politic, known as the board of public works of Virginia, were for many days present in the city of Washington, in this District, and in daily communication with said firm and the members thereof, and obtained at said time the aforesaid assignment to English and Bayne, and also sundry payments as well 308 as the transfer of sundry securities of said firm on account of the debt alleged by said bill, and that said officials were also from time to time subsequently present in said city, transacting business with said firm and the members thereof, and that the complainant was represented further in said city for many months by its agents and attorneys after the said failure, and after the right of action had accrued, and especially during the audit of the said bill in equity filed by the United States, and that the most abundant opportunity was afforded by the aforesaid presence and representation for bringing suit against the said firm and the members thereof. And respondent is advised and charges, that no suit having been brought, the claim now alleged in said bill is stale and barred by the statute of limitations, and ought not to receive the countenances of a court of equity.

Further answering, respondent has no knowledge or information that said John Withers died seized of the alleged interest in the National Hotel property on the alleged lot No. 2, in square No. 230, or lot No. 4, in square No. 229. Respondent does not know with certainty, but believes the heirs-at-law of said Withers are correctly set forth in said bill.

309 It is true that in the month of February, 1856, said John Withers conveyed the alleged lots Nos. 42 & 43, in reservation No. 10, in said city, for the benefit of this respondent, but it is untrue that said conveyance was made with the intent to hinder, delay, and defraud the complainant in the collection of the debt pretended to be due. On the contrary, respondent shews that, as far back as 1852, the said John Withers donated to the "endowment fund" of this respondent the sum of $20,000, provided other parties should give or secure to said object a like sum on or before the 1st of July, 1853, and signed, sealed, and delivered his bond to that effect; that said further sum was raised before said day by subscriptions based upon the undertaking of said John Withers, the parties subscribing paying cash or executing bonds, of which a blank copy is herewith filed, marked C. C., Exhibit No. 1, so that on the 1st of July, 1853, the full amount was held by this respondent in cash or unquestionable bonds, and thereby the said bond of Withers became absolute; that said Withers preferred retaining the amount of his bond as a loan from respondent, to which the latter

agreed, which agreement was made in 1853, and long before said firm of Selden, Withers & Co. failed or was in failing circumstances; that
interest was paid on said loan, and that the said conveyance was
310 made in part payment thereof, the consideration in the deed of
conveyance not being nominal, as alleged, but representing the amount at which respondent agreed to take said property in part payment of said debt. And this respondent incurred debts and obligations, which it would not have incurred had not said bond of said Withers been a debt binding upon him, and not subject to his revocation.

And to the joinder in said bill of distinct and independent matters, by seeking relief against the estate of said John Withers, and against this respondent, the vendee of the property last-above mentioned, this respondent claims the same benefit from this answer as if said bill had been specially demurred to as multifar'ous.

And having fully answered the said bill, this respondent prays to be hence dismissed, with costs, &c. And as in duty, &c.

[COLUMBIAN COLLEGE SEAL.] G. W. SAMSON,
President of the Columbian College.

DISTRICT OF COLUMBIA:

Before me, a justice of the peace in and for the District of Columbia, personally appeared this 5th of May, 1868, George W. Samson, and made oath that the matters and things in the foregoing answer are true, to the best of his knowledge and belief.

W'M MARTIN, *J. P.*

311 *Exhibit to answer of Col. College.*

No. . This agreement made and entered into this day of , 185 , between of the , and State of , of the first part, and the trustees of Columbian College, in the District of Columbia, on the second part:

Whereas the trustees of Columbian College are desirous to raise forty thousand dollars, for increasing the "endowment fund" of the college; and whereas John Withers, of Alexandria, has given his obligation to pay twenty thousand dollars of this sum on the 1st day of July next, (1853,) provided the other twenty thousand dollars shall by that time be secured. Now therefore this agreement witnesseth that the said
promises, and binds himself and his heirs to pay to the trustees of the said Columbian College, or their successors in office, or their author-
ized agent, the sum of dollars, on the following conditions,
312 viz: Should the sum of forty thousand dollars as above, be secured
by the 1st day of July, 1853, and be so officially announced by the board of trustees, in that case, the aforesaid sum of shall be due and payable to the said trustees;

the principal thereof to be faithfully appropriated by the trustees to the endowment fund, forever, except so much as may be necessary for obtaining and collecting the same. But, if the aforesaid sum of forty thousand dollars shall not be secured by the 1st of July, 1853, as aforesaid, then this agreement is to be null and void.

In witness whereof the parties to these presents have hereunto set their hands and affixed their seals this day of , 185 .

[SEAL.]
[SEAL.]

313 *Petition of E. Madden et al.—Filed* .

Supreme court of the District of Columbia. In equity.

BOARD OF PUBLIC WORKS OF VIRGINIA *vs.* ZEPH. ENGLISH AND OTHERS.	No. 1010.

To the hon. the judges of the supreme court of the District of Columbia, sitting in equity:

The petition of Elizabeth Madden and her husband, Jacob Madder, John A. Holtzman, William B. Holtzman, Robert B. McCormick, John B. Withers, and Alice W. Gulick, respectfully sheweth that subpœnas issued in the above entitled cause, and were returned as to all the defendants, on the 22d Aug., 1867, not found; that on the 11th Nov., 1867, the complainant, without any service of process on your petitioners, or affidavit of non-residence, as required by the rule of court, obtained an order of this court for publication, and subsequently, on the 7th day of January, 1868, entered at January rules a decree pro confesso as against your petitioners, except Jacob Madden, who is not named. Whereupon your petitioners pray that said order or decree may be set aside, for the above and other reasons apparant in the record, your petitioners allowed to appear to said cause, &c. 314

BRENT, MERRICK & PHILLIPS,
For Petitioners.

The above complainant is hereby notified that on Wednesday, the 22d April, the above petitioners will move the court to set aside the above decree pro confesso.

Yours, truly,

R. J. BRENT.

Service acknowledged this 14th April, 1868.

WALTER S. COX,
For Comp't.

The replication of the Board of Public Works of Virginia to the answer of the Columbia College, defendents.—Filed June 5, 1865.

315 This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto saith that he doth and will ever maintain and prove his said bill to be true, certain, and sufficient in law to be replied to by the repliant without that, that any other matter or things in said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove, as this hon. court shall direct. And humbly prays, as in and by his said bill he hath already prayed.

WALTER S. COX, *Sol'r.*

316 THE BOARD OF PUBLIC WORKS OF VIRGINIA *vs.* JACOB MADDER ET AL.	In equity. No. .

Ordered this 12th July, 1869, that the decree pro confesso against the non-resident defendants be, and the same is hereby, set aside, with leave to them to file their answers.

By order of the court.

Answer of J. & E. Madden.—Filed .

Supreme court of the District of Columbia. In equity. No. .

The joint and several answer of Jacob Madden and Elizabeth, his wife, to the bill of the Board of Public Works of Virginia.

These respondents, excepting to manifold errors, uncertainties, and insufficiencies of said bill, make answer to what is considered material, and admit all that is stated in reference to partnership of Selden, 317 Withers & Co., but deny that Selden retired from the firm; and to the non-joinder by complainants of Selden, as well as Latham, Bayne, and Whiting, claim the same benefit from their answer as if they had specially pleaded such non-joinder.

These respondents also admit contract and deposition of bonds with said firm by complainants, the dissolution of firm, the assignment made to Jno. A. English and William Bayne for distribution of assets, but have no knowledge of amount of bonds deposited, nor the indebtedness of firm at failure. They believe it, however, to have been considerable, and insist that it was due by the partners jointly. The provisions of the deed of assignment and the alleged deed of trust from Withers to Bocock & Wylie are referred by respondents to such deeds or duly-authenticated copies thereof when produced by complainants.

The reference to the case of the United States against said firm in January, 1856, claiming priority, these respondents claim that the decrees were issued against the firm, and deny that any was rendered against any of said partners, and to so much of the bill 318 as seeks relief on this ground, these respondents claim the same benefit by this answer as if they had specially demurred thereto.

As regards the action of a certain court of Alexandria Co., Va., they are advised that the decree thereof is on its face interlocutory, and shows that an appeal was prayed by John Withers; and that the court of appeals of Virginia, in answer thereto, declared the same interlocutory, as will appear by order of said court on file, and these respondents rely on said order as conclusively establishing the character of said decree, and for the omission to state said proceeding of the court of appeals, as well as other reasons, deny that Complainant's Exhibit No. 1 is a true transcript of said cause.

On or about the 27th of Dec., 1854, the complainants impleaded the members of Selden, Withers & Co., in the supreme court of N. Y., in an action at law formed on contract in this bill, and judgment was rendered by said court, in May, for $502,140.60. Before said action, Jno. Withers was a citizen of Virginia, and not subject to the juris- 319 diction of said court, was not served with process, and did not appear by attorney or otherwise; that William Selden was not served with process, and did not appear therein; but that Bayne & Latham were served with process; and that Whiting voluntarily appeared by attorney; and that, as to Bayne, Latham, & Whiting, said court had jurisdiction as regards person and cause of action, and, being so competant, their judgment is valid against the parties served with process and appearing in the action, and served as a merger and extinguishment of said cause of action and discharges Jno. Withers; so these respondents claim the same benefit as if they had specially pleaded the proceedings in said action in bar to complainant's bill, and refer to copy of the exemplification of said proceedings contained in Complainant's Exhibit No. 1.

By the law of the State of N. Y. in force when said judgment was rendered, these respondents claim the same benefit of merger and extinguishment as shown above for Jno. Withers, and pray it as if
320 they specially pleaded in bar to complainant's bill. By the law
of said State, when action is brought against several joint debtors, the plaintiff is allowed to have judgment not only against the party served with process, but also against the other joint debtors not served, but the judgment can only effect the social property and the person and private property of the party served with process, and forever discharged from liability the person and private property of the joint debtors not so served, which exemption is claimed for John Withers and for these respondents as if same defence had been specially pleaded. But even if judgment under such law did not operate on parties served with process, it could have no extra-territorial application, but could be a nullity to parties beyond the State not served with process or not voluntarily appearing, so that an extinguishment would equally follow.

This defence was set up by Withers in the circuit court of Alexandria, and was the main ground of the appeal heretofore referred to,
321 and was refused, because the decree was only interlocutory.

These respondents also admit that Withers removed to Washington, &c., but refer to will, when a duly-authenticated copy is produced. They admit settlement in regard to distribution, but refer to record of cause when filed by complainants.

With reference to so much of the bill of complaint as charges intent of fraud on parties interested in distribution, and collaterally impeaches said decree, exception is taken as if specially demurred to.

In regard to legacy to James Withers these respondents deemed it just that it should be paid, and after contributing their share towards such legacy, payment of counsel fees, &c., there was received by these respondents $6,000 cash, and stocks and bonds not exceeding in value $6,741.08, market-rate. These respondents are informed and believe that the executor had no notice in fact of the proceedings in the circuit court of this city, nor of the pretended decree of the circuit court of Alexandria Co., and deny that, in the first-mentioned cause, there
322 ever was a decree of which the executor was bound in law to notice, and, in the latter cause, that there ever was a final decree.
These respondents charge the complainants with fraudulently withholding order of court of appeals in Va., determining said decree interlocutory, and deny that suit for distribution was instituted without knowledge of the complainants, or with an avoidance of publicity, &c.

The law limits non-residents to three years for the presentation of all claims as creditors. John Withers had made provision out of his private means to the amount of $300,000, partly by deed to Bocock & Wylie, and partly by the payment of debts due by the firm, and entitled to priority under deed to English & Bayne, and that to his death he denied the exaggerated pretensions of complainants. The judgment in the N. Y. suit acted as an extinguishment of Withers' liability. No claim was exhibited, and the pretence was disputed and resisted in testator's life-time, and ten years had elapsed since right of action accrued.

Under these circumstances the bill was filed; publication was
323 made by the executor and auditor; reference was made Novem-

ber 21st, 1865; report filed February 27th, 1866; decree of distribution not passed until 7th of April, 1866. Complainants cannot follow legacy into respondents' hands, because it was paid in pursuance of a decree of a court of competent jurisdiction, and these respondents claim the same benefit as if said decree were specially pleaded in bar to relief sought by complainants. Further, by statute in no case can an executor retain for a claim due non-resident for a longer period than three years, and when such detention is made, and there has been no demand in suit in the interim, such claim is forever barred; and whenever a claim is disputed, if the creditor does not bring suit within nine months, said creditor is forever barred. The provisions of which statute are offered by these respondents in bar to complainants' bill as if specially pleaded.

To so much of bill as charges fraud in decree is demurred to as uncertain and unspecific. Respondents claim and call for proof. Said 324 firm settled with complainants by transferring bond of Atwood & Ruber, of N. Y., for $100,000, with interest from Nov., 1854, which bond had been taken by said firm in payment for some of the Va. bonds which they had transferred. Atwood & Reber were in good credit, but subsequently failed, and complainants, on such failure, pretended that the bond was taken merely as collateral security, and not, as was the fact, in part payment. Complainants further received from said firm Chesapeake & Ohio Canal bonds, amounting with coupons, on 1st of Jan., 1855, to upwards of $220,000, of which they used or lost part during the rebellion, amounting to about $50,000. Complainants further received from said firm the note of W'm Sturgis, of N. Y., for $111,000, secured by bonds of the Hillsborough & Cincinnati R. R. Co., amounting to $100,000, and that, early in 1861, said railroad company was merged into a new company, and that the said bonds, securing 325 Sturgis' note, were delivered to the new co., and stock issued thereon, which stock was subsequently at par, and that for this payment and securities complainants do not account. These respondents believe that other payments have been made and securities transferred by said firm in behalf of complainants, for which the latter has failed to account. The trustees, English & Bayne, have paid complainants upwards of $60,000, and by the deed to Bocock & Wylie hold as security, for any balance due, the private property of said John Withers, worth not less than $250,000; and these respondents charge that complainants should account for payments aforesaid, and if their claim is valid they should exhaust collateral securities transferred by the firm and said Withers before being allowed to maintain this bill.

If complainants ever had cause of action it arose over three years before filing of said bill. And these respondents aver that the cause 326 of action set forth in said bill accrued more than three years before the filing thereof, nor was there any admission of indebtedness or agreement by respondents or executor at any time within three years to pay any sum or sums claimed in said bill. These respondents believe that, in Nov., 1854, after the failure of Selden, Withers & Co., officials, constituting the board of public works of Virginia, were for many days in Washington in daily communication with the said firm, and obtained at that time the assignment to English & Bayne, and sundry payments, as well as the transfer of sundry securities on account of debt alleged in said bill, and that complainants were represented in the city for many months by their agents and attorneys after said failure of, and specially during the audit of said bill in equity filed by the U. S., and that the most abundant opportunity was afforded for bringing suit against the firm and parties thereof. No suit having been 327 brought, the bill is barred by the statute of limitations. These respondents know nothing of Withers' interest in National Hotel, and lots in squares 230 & 229; and they pray to be hence dismissed, with their costs.

R. J. BRENT,
R. T. MERRICK,
For Defendants.

STATE OF MISSOURI, *County of Saline:*

Before the subscriber, a justice of the peace in and for said county, this 23d day of June, A. D. 1869, personally appeared before me, Jacob Madden and Elizabeth, his wif', and severally made oath that the facts stated in the written answer are true, to the best of their respective knowledge and belief.

JACOB MADDEN.
ELIZABETH C. MADDEN.

Sworn and subscribed before me this 23d day of June, A. D. 1869.

J. VANDYKE,
Justice of the Peace for Marshall Township, Saline Co.

328 STATE OF MISSOURI, *County of Saline:*

I, P. E. Maupin, clerk of the county court within and for said county, do certify that J. Vandyke, before whom the above and foregoing affidavit was made, was, at the time of taking the same, and still is, an acting justice of the peace within and for said county, duly commissioned and sworn, and that the foregoing signature purporting to be his, is his genuine signature.

In testimony whereof I hereto set my hand and affix the seal of our said court, at office in Marshall, this 23d day of June, A. D. 1869.

[SEAL.] P. E. MAUPIN, *Clerk,*
By D. MEQUILLET, *Dep'ty Cl'k.*

328½ *Replication.—Filed Aug't 5th.*

In the supreme court of the District of Columbia.

BOARD OF PUBLIC WORKS VA.
vs. } 1010. Equity.
SELDEN, WITHERS & CO.

The complainant hereby joins issue with the answer of defendants J. & E. Madden.

329 *Decree appointing W. S. Cox trustee to sell.—Filed July* 13, 1869.

BOARD OF PUBLIC WORKS VA.
vs. } 1010. Equity dock, 8.
WITHERS & AL.

On this 13th day of July, A. D. 1869, it is, by the court, with the consent of the solicitors present in court, ordered and decreed that Walter S. Cox be appointed receiver, with power to sell all the interest of Jno. Withers, dec'd, in the real estate mentioned and described in the bill, said sale to be either public or private, as said receiver may most find advantageous, and if made publicly, to be after ten days' notice and at least three insertions, the proceeds of sale to be brought into court to abide its future order; the said receiver to file his bond in the usual form of a trustee's bond, in the penalty of twenty-five hundred dollars, before entering upon the discharge of his duties.

A. B. OLIN, *Justice.*

330 *Receiver's bond.—Filed Oct.* 9, 1869.

Know all men by these presents that we, Walter S. Cox and W'm H. Philip, are held and firmly bound unto the United States, in the full and just sum of twenty-five hundred dollars, to be paid to the said United States, their certain attorney, or assigns; to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and adm'ors, jointly and severally, firmly by these presents, sealed with our seals and dated this fifth day of October, A. D. 1869.

Whereas, by a decree of the supreme court of the District of Columbia, made in the cause The Board of Public Works of Virginia against English & al., No. 1010, equity doc., 8, and dated July 13, 1869, the said Walter S. Cox was appointed receiver for the objects in said decree mentioned: Now, the condition of the above obligation is such, that if the said Walter S. Cox shall well and truly perform the duties
331 of him required by said decree, and every other order and decree in said cause, then the said obligation shall be void; it shall otherwise remain in full force and virtue at law.

WALTER S. COX [SEAL.]
WILLIAM H. PHILIP [SEAL.]

Witness—
EDW. SWANN.

Approved this 6th Oct., 1869.

A. B. OLIN.

Answer of def'ts S. E. Gulick & wife.—Filed Mar. 12, 1870.

Supreme court of the District of Columbia.

BOARD OF PUBLIC WORKS OF VA.
vs.
SELDEN, WITHERS ET AL.
} 1010. Equity.

The separate answer of Dr. S. Edward Gulick and Alice W. Gulick, his wife, to the bill of the Board of Public Works of Virginia.

332 These respondents, excepting to manifold errors, uncertainties, and insufficiencies of said bill, make answer to what is considered material, and admit all that is stated in reference to partnership of Selden, Withers & Co., but deny that Selden retired from the firm; and to the non-joinder by complainants of Selden, as Latham, Bayne, & Whiting, claim the same benefit from their answer as if they had specially pleaded such non-joinder. These respondents also admit contract and deposition of bonds with said firm by complainants, the dissolution of firm, the assignment made to Jno. A. English & W'm Bayne for distribution of assets, but have no knowledge of amount of bonds deposited, nor the indebtedness of firm at failure. They believe it, however, to have been considerable, & insist that it was due by the part-

ners jointly. The provisions of the deed of assignment, and the alleged deed of trust from Withers to Bocock & Wylie, are referred by respondants to such deeds, or duly-authenticated copies thereof, when
333 produced by complainants. In reference to the case of the United States against said firm in January, 1856, claiming priority, these respondents claim that the decrees were issued against the firm, and deny that any was rendered against any of said partners; and, to so much of the bill as seeks relief on this ground, these respondents claim the same benefits by this answer as if they had specially demurred thereto. As regard the action of a certain court in Alexandria County, Va., they are advised that the decree thereof is on its face interlocutory, and shows that an appeal was prayed by John Withers, and that the court of appeals of Virginia, in answer thereto, declared the same interlocutory, as will appear by order of said court on file; and these respondents rely on said order as conclusively establishing the character of said decree, and for the omission to state said proceeding of the court of appeals, as well as other reasons, deny that Complainant's Exhibit No. 1 is a true transcript of said cause. On or about the
334 27th of Dec., 1854, the complainants impleaded the members of Selden, Withers & Co., in the supreme court of N. Y., in an action at law formed on contract in this bill, and judgment was rendered by said court in May for $502,140.60. Before said action, Jno. Withers was a citizen of Virginia, and not subject to the jurisdiction of said court, was not served with process, and did not appear by attorney or otherwise; that W'm Selden was not served with process, and did appear therein, but that Bayne & Latham were served with process, and that Whiting voluntarily appeared by attorney, and that, as to Bayne, Latham, & Whiting, said court had jurisdiction as regards person and cause of action, and, being so competent, their judgment is valid against the parties served with process, and appearing in the action, and served as a merger and extinguishment of said cause of action, and discharges Jno. Withers; so these respondents claim the same benefit as if they had specially pleaded the proceedings in said action in bar to complainant' bill, and refer to copy of the
335 exemplification of said proceedings contained in Complainant's Exhibit No. 1. By the law of the State of New York, in force when said judgment was rendered, these respondents claim the same benefit of merger and extinguishment as shown above for Jno. Withers, and pray it as if specially pleaded in bar to complainant's bill. By the law of said State, when action is brought against several joint debtors, the plaintiff is allowed to have judgment not only against the party served with process, but also against the other joint debtors not served; but the judgment can only affect the social property and the person' and private property of the party served with process, and forever discharged from liability the person & private property of the joint debtors not so served, which exemption is claimed for Jno. Withers and for these respondents, as if same defense had been specially pleaded. But even if judgment, under such law, did not operate on parties served with process, it could have no extra-territorial application, but would
336 be *in* nullity to parties beyond the State not served with process, or not voluntarily appearing, so that an extinguishment would equally follow. This defence was set up by Withers in the circuit court of Alexandria, Va., and was the main ground of the appeal heretofore referred to, and was refused because the decree was only interlocutory. These respondents also admit that Withers removed to Washington, D. C., but refer to will when a duly-authenticated copy is produced.

They admit statement in regard to distribution, but refer to record of cause when filed by complainants. With reference to much of complaint as charges intent of fraud on parties interested in distribution, collater'ly impeaching said decree, exception is taken as if specially demurred to. In regard to legacy of Ja's Withers, these respondents deemed it just that it should be paid; and, after contributing their share towards such legacy, payment of counsel's fees, &c., there was received by these respondents cash, stocks and bonds not exceeding in value
337 $3,112.10 market-rate. These respondents are informed and believe that the executor had no notice in fact of the proceedings of the circuit court of this city, nor the pretended decree of the circuit court of Alexandria County, and deny that, in the first-mentioned cause there ever was a decree of which the executor was bound in law to notice, and in the latter there ever was a final decree. These respondents charge the complainants with fraudulently with'olding order of court of appeals in Virginia, determining said decree interlocutory, and deny that suit for distribution was instituted without knowledge of the complainants or with an avoidance of publicity, &c. The law limits non-residents to three years for the presentation of all claims as creditors. John Withers had made provision out of his private means to the amount of $300,000, partly by deed to Bocock & Wylie and partly by payment of debts due by the firm, and entitled to priority under deed to English & Bayne; and that to his death he denied the exag'er-
338 ated pretensions of complainants. The judgment in the N. Y. suit acted as an extinguishment of Withers' liability, no claim was exhibited, and the pretense was disputed and resisted in testator's life-time. Ten years had elapsed since the right of action accrued. Under these circumstances the bill was filed; publication was made by the executor and auditor; reference was made Nov. 21st, 1865; report filed Feb'y 27th, 1866; decree of distribution not passed until 7th April, 1866. Complain'ts cannot follow legacy into respondents' hands, because in pursuance of a decree of a court of competent jurisdiction, the latter claim the same benefit as if it, said decree, was specially pleaded in bar to relief sought by complainants. Further, by statute in no case can an executor retain for a claim due non-resident for a longer period than 3 years, and when such detention is made, and there have been no demand or suit in the interim, such claim is forever buried, and whenever a claim is disputed, if
339 the creditor does not bring suit within nine months said creditor is forever barred, the provisions of which statute are offered by these respondents in bar to complainant's bill as if specially pleaded. So much of bill as implicates fraud in decree is demurred to as uncertain and unspecific. Respondents claim and call for proof. Said firm settled with complainants by transferring bond of Attwood & Reber, of N. Y., for $100,000, with interest from 1854, which bond had been taken by said firm in payment for some of the Va. bonds which they had transferred. Atwood & Reber were in good credit, but subsequently failed, & complainants pretended that the bond was only taken as collateral security, and not, as was the fact, in part payment. Complainants further received from said firm Chesapeake & Ohio Canal bonds, amounting, with coupons, on 1st Jan'y, 1855, to upwards of $220,000, of which they used or lost part during the rebellion, amounting to about $50,000.

Complainants further received from said firm the note of W'm
340 Sturgis, of N. Y., for $111,000, secured by bonds of the Hillsboro' & Cincinnati R. R. Co., amounting to $100,000; and that early in 1861 said railroad was merged into a new company; and that the

said bonds securing Sturgis' note were delivered to the new company,
& stock *us*ed thereon, which stock was subsequently at par, and that
for this payment & securities do not account. These respondents be-
lieve that other payments have been made and securities transferred by
said firm in behalf of complainants, for which the latter have failed to
account. The trustees, English & Bayne, have paid complainants up-
wards of $60,000, and by the deed to Bocock & Wylie, hold as security
for any bal*l*ance due the private property of said John Withers, worth
not less than $250,000. And these respondents charge that complain-
ants should account for payments aforesaid, and exhaust collateral se-
curities transferred by the firm and said Withers before being allowed
to maintain this bill. If complainants ever had cause of action,
341 it arose over three years before filing of said bill. These respond-
ents aver that the cause of action set forth in said bill accrued more
than three years before the filing thereof, nor was there any admission
of indebtedness or agreement by respondents or executor at any time
within three years to pay any sum or sums claimed in said bill. These
respondents believe that in Nov., 1854, after the failure of Selden, With-
ers & Co., officials, constituting the board of public works of Va.,
were for many days in Washington, in daily communication with the
said firm, and obtained at that time the assignment to English & Bayne,
& sundry payments, as well as the transfer of sundry securities on
account of debt alleged in said bill; and that complainants were
represented in the city for many months by their agents and
attorneys after said failure of and especially during the audit of
said bill in equity, filed by the U. S.; and that the most abund-
ant opportunity was afforded for bringing suit against the firm
342 and parties thereof. No suit having been brought, the bill is barred
by the statute of limitations. These respondents know nothing
of Withers' interest in the National Hotel, and lots in square' 231 and
239.

S. E. GULICK.
A. W. GULICK.

STATE OF VIRGINIA,
County of Loudin, to wit:

Before the subscriber, a justice of the peace in and for said county, this 24th day of September, 1869, personally before me, Dr. S. Edward Gulick and made oath that facts stated in the above-written answer are true, to the best of his knowledge and belief.

BASIL W. SHOEMAKER, *J. P.*

STATE OF VIRGINIA,
Loudon County, to wit:

I, Cha's P. Janney, clerk of the county court, do certify that Basil W.
Shoemaker, whose signature appears to the within paper, was, at the
time of signing the same, and is, if alive, a justice of the peace in
342 and for said county, duly commissioned and qualified, and that
full faith and credit are due to all his acts as such.

In testimony I have hereunto set my hand and affixed the seal of the said court this 27th day of September, 1869.

[SEAL.] CHA'S P. JANNEY, *C. C.*

STATE OF VIRGINIA,
County of Alexandria, to wit :

This day Attie W. Gulick, the wife of S. E. Gulick, whose names are signed to the forgeoing answer, personally appeared before me, D. S. Smoot, a notary public in and for the county aforesaid, and made oath in due form of law that the said answer, so far as made of her own knowledge, is true, and so far as made upon information derived from others she believes the same to be true.

Given under my hand and notarial seal this 8th of October, 1869.

[SEAL.]

D. S. SMOOT,
Not'y Pub.

344 *Replication to Gulick's answer.—Filed Sept.* 14, 1870.

THE BOARD OF PUBLIC WORKS OF VA.
vs.
ZEPH. ENGLISH ET AL.
} 1010. Eq.

The complainant hereby joins issue with the answer of Gulick & wife.

Receiver's report of sale.—Filed Nov. 12, 1870.

BOARD OF PUBLIC WORKS OF VIRGINIA
vs.
JOHN WITHERS' EX'RS ET AL.
} 1010. Equity.

To the hon. judges supreme court District of Columbia :

The undersigned respectfully reports that, after having advertised as required by the decree, he offered at auction, in front of the National Hotel, the interest of John Withers therein, being 20 out of 315 shares in the original hotel, and after a spirited bidding, the same was
345 struck off to James C. McGuire who was the highest bidder, for the sum of four thousand dollars ; and that he has complied with the terms of sale by paying one-half in cash and giving his note at 6 months for the residue. He further reports that said sale was fair and bona fide.

WALTER S. COX,
Receiver.

Sworn to this 12th day of November, A. D. 1870.

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Ass't clerk.

Order ratifying receiver's sale, nisi.—Filed Nov. 12, 1870.

BOARD OF PUBLIC WORKS OF VIRGINIA
vs.
ZEPH. ENGLISH ET AL.
} 1010. Equity.

The receiver in this cause having reported that he has sold the interest of John Withers in the National Hotel to J. C. McGuire for $4,000 and that the purchaser has complied with the terms of the sale—
346 It is by the court, this 12th day of November, A. D. 1870, ordered that said sale shall stand ratified and confirmed, without

further order of the court, unless cause be shewn to the contrary on or before the first Tuesday of December next.

By the court.

MACARTHUR, *Justice.*

Proceedings before the supreme court of the District of Columbia in general term, commening the 4th Monday, 26th day, of September, 1870.

MONDAY, *September* 26, 1870.

By order of the justices, opening of the court proclaimed by the marshal—present, Justices Olin, Wylie, Humphreys, and MacArthur; absent, Chief Justice Cartter.

347 MONDAY, *December* 19*th*, 1870.

Session resumed pursuant to adjournment—present, Chief Justice Cartter & Justices Olin, Wylie, and MacArthur.

BOARD OF PUBLIC WORKS OF V'A
vs. } 1010. Equity.
ZEPH. ENGLISH ET AL.

This cause having, on the motion of complaint, by its solicitor, been set for hearing at the special term upon the bill and answers of the defendants Columbia College and Joseph and Elizabeth Madden, and upon argument of the counsel for said parties on both sides—

It is now thereupon ordered, adjudged, and decreed that the bill be dismissed as to said parties without prejudice.

And from this decree the complainant prays an appeal, in open court, to the Supreme Court of the United States, and it is allowed.

By order of the court.

348 *Bond of appeal to the S. C. U. S.—Filed Jan'y* 21, 1871.

Know all men by these presents that the Board of Public Works of Virginia and John F. Hanna are held and firmly bound unto the Columbia College, S. Edward Gulick, & Atta W. Gulick, Jacob Madden, and Elizabeth Madden in the full and just sum of five hundred dollars, to be paid to said parties, their certain attorney or assigns, to which payment, well and truly to be made and done, said obligors bind themselves, their successors, heirs, executors, and adm'ors, jointly and severally, firmly by these presents, sealed with their seals, and dated this twentieth day of January, A. D. 1871.

Whereas the above-bounden Board of Public Works have prosecuted an appeal to the Supreme Court of the United States to reverse a decree rendered against them by the supreme court of the District of Columbia, in a cause wherein said Board of Public Works were complainants
349 and said Columbia College and others were defendants: Now, the condition of the above obligation is such, that if the said Board of Public Works shall prosecute their said appeal with effect, and answer all costs if they shall fail to make good their said plea, then said obligation shall be void; it shall otherwise remain in full force and virtue at law.

SEAL BOARD
OF
PUBLIC WORKS
OF VIRGINIA.

Witness the signature of the president of said board and the seal thereof.

W. C. WALKER,
Pres't Board of Public Works of Virginia.
JNO. F. HANNA.

Attest:
THOMAS H. DELVILL,
Sec'y B. P. Works.

Approved.

D. K. CARTTER, *Chief Justice.*

350 *Clerk's certificate to record.*

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the foregoing 350 pages of writings are true and complete copies, are on file and of record in the clerk's office of said court, and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled Board of Public Works of Virginia vs. Zeph. English et al., 1010, equity dock., 8.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 28th day of November, 1871.

[SEAL.] R. J. MEIGS, *Clerk,*

By L. P. WILLIAMS, *Ass't Clerk.*

(Indorsement on cover:) No. 432. The Board of Public Works of Virginia, appellant, vs. The Columbia College, S. Edward Gulick, et al. Dist. of Columbia sup. court. Filed 28 November, 1871.

SUPPLEMENT TO RECORD.

Supreme Court of the District of Columbia.

FEBRUARY 2, 1869.

Board of Public Works of Virginia
v.
English, *et al.*
} 1010. Equity.

Set this cause for hearing on bill, exhibits, answers, and general replication against the defendant, the Columbia College.

Walter S. Cox,
Solicitor.

A true copy from the records in the above cause.

Test: R. J. Meigs, *Clerk*,
By L. P. Williams,
Asst. Clerk.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

September 27, 1869.

Board of Public Works of Virginia
v.
English, *et al*
} 1010. Equity.

Set this cause for hearing as against defendants, who have answered, and place the same on the calendar for October special term.

Walter S. Cox,
Solicitor for Compts.

A true copy from the records in the above cause.

R. J. Meigs, *Clerk.*
By L. P. Williams,
Asst. Clerk.

VIRGINIA: *In the Supreme Court of Appeals, held at Richmond, Saturday, November* 16, 1861.

The petition of John Withers, &c., for an appeal from decree pronounced by the circuit court of Alexandria county, on the 1st day of June, 1860, in a suit in which the Board of Public Works of Virginia was plaintiff, and William Selden, the petitioners, and others, were defendants, having been maturely considered, and the transcript of the records of the said decree seen and inspected, the court being of opinion that the decree being interlocutory, no execution can issue without the order of court; and deeming it most proper that the case should be proceeded in further in the court below before an appeal is allowed therein, the appeal, for that reason, is denied.

STATE OF VIRGINIA, } *to wit:*
City of Richmond, }

I, George L. Christian, clerk of the supreme court of appeals of Virginia, held at Richmond, do hereby certify that the foregoing in a true copy of an order of said court entered in the case therein mentioned on the 16th day of November, 1861, as appears from the records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Richmond, this 18th day of March, 1873.

[SEAL.] GEO. L. CHRISTIAN.

I, Richard C. L. Moncure, president of the supreme court of appeals of Virginia, do hereby certify that George L. Christian, whose name is signed to the foregoing certificate, bearing date the 18th day of March, 1873, is now, and was at the time of signing the same, clerk of the said court at its place of session at Richmond, and that said attestation is in due form.

Given under my hand this 18th day of March, A. D. 1873.

R. C. L. MONCURE.

Supreme Court United States.

DECEMBER TERM, 1872.

The Board of Public Works of Virginia,
APPELLANT,
vs.
The Columbia College and others.

No. 196.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF OF THE COLUMBIA COLLEGE.

WALTER D. DAVIDGE,
For the Columbia College.

M'GILL & WITHEROW, PRINTERS AND STEREOTYPERS, WASHINGTON, D. C.

Supreme Court of the United States.

The Board of Public Works of Virginia, Appellant

vs.

The Columbia College and Others.

No. 196. Dec. T., 1872.

CASE.

On the 24th of July, 1867, the appellant filed its bill, alleging that in 1854 the firm of Selden, Withers & Co., (composed of John Withers, Robert W. Latham, Lawrence P. Bayne, and George W. C. Whiting,) was largely indebted to the appellant on account of bonds deposited with the said firm for sale; that the firm became insolvent in November, 1854, and made an assignment, for the benefit of its creditors, of the partnership assets, to John A. English and Wm. Bayne; that the United States, in January, 1856, filed a bill in the late circuit court of this District, claiming a priority, and that in said cause the indebtedness of said firm to the appellant was established by the decree of said court to be "at least the sum of $436,874 17;" that John Withers conveyed certain private property in Virginia to W. B. Bocock, Attorney General of Virginia, and Andrew Wylie to secure said indebtedness, and in September, 1858, appellant filed a bill in the circuit court of Alexandria county, Virginia, against the members of said firm, the trustees Bayne and English, and trustees Bocock and Wylie, and praying a decree against said partners and the sale of the property conveyed by John Withers, and the application of the proceeds of sale to the debt of appellant; and that on the 1st of June a decree was rendered against John Withers and his partners for the sum of $513,615 29, (Record, f. 1 to 7.) A transcript of the record is filed with the bill, marked Exhibit No. 1, (Record, f. 6.) It will be found Record, f. 18 to 280.

The bill further alleges the removal of John Withers from Alexandria to the District of Columbia in 1859, and his death in November, 1861, leaving a will capable only of passing personal estate; that Zeph. English, as executor of said will qualified, in 1863, and took possession of the personal estate of large value; that Withers by his will divided his estate into five parts, leaving one part to his brother James Withers, three parts to the children of Augustine, Betsey and Sally, (deceased brother and sister of testator,) and one part to George W. Samson, president of the Columbia College in this District. (Record, f. 6 to 8.)

That on the 16th of October, 1866, a bill was filed by the Columbian College and other legatees against the executor for administration of the personal estate; and that on the 7th of April, 1866, the report of the auditor, stating the account of distribution, was ratified, and a decree passed for distribution. The bill then charges, that the executor was bound to take notice of the proceedings in the late circuit court and in Alexandria county, Virginia, and that he had, in fact, notice of said proceedings, and failed properly to defend the suit; that the said suit was instituted by the complainants therein, with full knowledge on the part of some of them of the claim of appellant, and hurried through with a careful avoidance of publication, and with the design to defeat said claim; and that the appellant has the right to treat the executor as if no decree of distribution has been made, and has also the right to follow the fund distributed into the hands of the legatees. (Record, 6 to 13.) The proceedings and decree of distribution, thus impeached, are not made part of the bill.

The bill further alleges, that John Withers died intestate as to certain real estate in Washington city, being an interest in the National Hotel, and claims that the appellant is entitled to subject that property to sale for payment of its debts. (Record, f. 13.)

The bill further alleges, that in February, 1856, John Withers conveyed certain valuable real estate in said city to the Columbia College, nominally for $18,000; that no money was actually paid by the vendee, and said conveyance was, in fact, a gift, and made by Withers when insolvent, and was besides made with intent to hinder, delay, and defraud the appellant, and ought to be decreed to be null and void. (Record, f. 14 to 16.)

The prayer of the bill is, that the executor may be decreed to account for the whole fund; that the legatees may be decreed to refund; that the intestate property may be sold and applied to appellant's debt; and that the conveyance to the Columbian College may be decreed to be void, and may likewise be sold and applied to the appellant's debt. (Record, f. 15 to 18.)

Process was issued against all the defendants July 24, 1867, and returned "*non sunt*," (Record, f. 280,) and was renewed against the Columbia College, (f. 282,) and irregularly served, (*Id.;*) but the Columbia College appeared and answered May 6, 1868. (Record, f. 287.)

THE ANSWER OF COLUMBIA COLLEGE.

It avers that in 1854, when the cause of action accrued to the appellant, William Seldon was a copartner in the firm of Selden, Withers & Co.; and to the non-joinder in this suit of said Selden, as well as of the other partners, Bayne, Latham, and Whiting, it prays the same benefit as if such non-joinder had been pleaded. (Record, f. 287 to 289.)

It admits that when the firm failed it was largely indebted to the appellant, and insists that said debt was due by the firm jointly, (f. 289,) and denies the debt to be as alleged, and calls for full proof thereof. (f. 304.)

It further alleges, on information and belief, that the appellant received, on account of its debt, large payments and securities, amounting to near $450,000, rating the securities at par, for which it never accounted; and moreover, that John Withers, out of his private means, made provision for said debt, by taking up debts entitled to priority under the assignment to English and Bayne, and by executing the alleged deed of trust to Bocock and Wylie for the real estate in Virginia, mentioned in the bill, as well as another deed of trust to the same parties for valuable real estate near St. Louis, and that such provision largely exceeded $350,000; and that, without accounting for said payments and collaterals, the appellant ought not to be allowed to maintain this bill. (f. 301 to 303; 304 to 307.)

It admits the assignment to English and Bayne, and for its provisions refers to the same when produced by the appellant. (f. 289.) It further admits the filing of the bill by the United States in the late circuit court, in January, 1856, but denies that the debt of appellant was therein established, or any decree rendered against any of the partners of said firm; and as to any relief on the ground of said proceedings, it demurs to the bill for uncertainty. (f. 289, 290.) It admits the deed of trust to Bocock and Wylie, and avers another deed of trust to the same parties for property near St. Louis, and avers that the property embraced in both deeds is worth $250,000. (Record, 289, 301, 306.) It admits the filing of the bill by the appellant in the circuit court of Alexandria county, and claims that the decree therein rendered was interlocutory only, and had been judicially declared to be such by the court of appeals of Virginia in the petition of John Withers and others for an appeal from said decree. (f. 290, 291.)

It alleges that on the 27th of December, 1854, the appellant impleaded the members of said firm of Selden, Withers & Co., in the supreme court of New York, for the county of New York, in an action at law, in which action no process was served on John Withers, who was a resident and citizen of Virginia, but that process was served on two of said partners, Bayne and Latham, and a third, Whiting, voluntarily appeared; and that in said action judgment was rendered against all the members of said firm, and claims that said judgment worked an extinguishment of the cause of action, and discharged Withers, who had not been served with process; and further, that by the law of the State of New York such judgment, whilst it bound the person and private property of persons served with process and also the social property, discharged from liability the person and private property of persons not served with process. (f. 291 to 297.) The answer further admits the alleged removal of Withers to this District, and his death in November, 1861, leaving a will insufficiently attested to pass real estate, for the contents of which it refers thereto; the qualification of Zeph. English as executor, and his taking possession of the personal property of the testator. (Record, f. 296 to 298.) It admits the filing of the bill for administration of the assets, and avers that on the coming in of the answer of the executor, the cause was referred to the auditor, with directions to take an account of the personal property of the testator, and of all debts due and theretofore exhibited or to be exhibited under said reference, and of the balance distributable among the legatees and next of kin; that the auditor duly reported; and that on the 7th of April, 1866, a decree ratifying the auditor's report, and ordering distribution was made. (f. 297 to 299.) It avers that publication was duly made by the auditor, (f. 302,) and denies the right of the appellant to follow the fund. (f. 303.)

It further avers that the whole amount received by the the Columbia College under said decree was between $17,000 and $18,000. (Record, 298, 299.) *It then proceeds distinctly to traverse, on information and belief, all the matters relied on by the bill in impeachment or avoidance of the decree.* (f. 303, 304.) It objects to the allegations of the bill in impeachment of the decree as vague and uncertain. (f. 304.) It pleads the statute of limitations in bar of the claim set up by the appellant, (f. 306, 307,) *and avers the presence of the appellant in this District after the right of action accrued.* (f. 307, 308.)

It further objects that the bill is multifarious. (f. 310.) It disclaims any knowledge or information touching the alleged interest in the National Hotel. (f. 308) It traverses all matters set forth in the bill in impeachment of the conveyance to the defendant in February, 1856, and fully explains the transaction. (f. 309–313.)

The appellant filed a replication to the above answer June 5, 1868. (f. 315.)

Jacob Madden and Elizabeth his wife, and S. Edward Gulick and Attie his wife, the said Elizabeth and Attie being two of the legatees under the will of John Withers, voluntarily appeared and answered, and replications were filed by the appellant. (Record, f. 316–329, 331–335.) Their answers do not differ materially from that of the College.

No evidence whatever was adduced in support of the allegations of the bill.

The cause was set for hearing upon the bill and answers. (Record, f. 347.)

The decree dismissed the bill without prejudice. (Record, f. 347.)

I.

The bill is multifarious. It embodies several suits in one. It claims to charge the executor with the fund distributed, and also to follow the fund into the hands of the legatees. It further seeks to subject the intestate's real estate to sale, and further to set aside the deed made in 1856 to the Columbia College as voluntary and for fraud. These distinct and independent matters cannot be united in one bill.

Story's Eq. Pl., §§ 271–275; 280–285.

The objection was taken in the answer. (Record, f. 310.) The court would *sua sponte* take it at the hearing.

Id., §§ 271, 284*a*.

II.

The appellant is not in this case entitled to follow the fund.

1. It is not denied that, irrespective of some special statutory provision, when there has been an administration of an estate by a proceeding in chancery, a party, upon proof that he has had no notice of the proceeding, and has not been guilty of negligence, may follow the fund. But the burden of proof is always upon such party. It is for him to aver and make out such a condition of facts as will exonerate him from the charge of laches. The distribution is made under the decree of a court of competent jurisdiction, and after such publication and precautionary measures as appear requisite to protect the rights of all parties interested. The presumption is in favor of notice. And yet a party may not have received it, or receiving it he may not have been able to avail himself of it, and such party is, therefore, not precluded by the decree, but may for good cause follow the fund. The whole subject was elaborately discussed by this court in *Williams* v. *Gibbes*, (17 How., 239, 254, 255.) The right to follow was held to exist in that case, but "*upon proof of no wilful default on the part of such creditor, and no want of reasonable diligence on his part.*"

See also David *v.* Froud, 1 Myl. & K., 200.
Sawyer *v.* Birchmore, 1 Keen, 391.
Greig *v.* Somerville, 1 Russ. & M., 338.
Gillespie *v.* Alexander, 3 Russ., 130.

The question of diligence depends upon all the circumstances of the case.

Sawyer *v.* Birchmore, *sup.*

It is essential always to know what the proceedings in the administration suit were, and how far they raise a presumption of notice and diligence; but, in the present case, the appellant neither makes those proceedings part of the bill nor shows the character of the notice. Neither does the bill aver the want of notice. It avers (f. 11) that "there was a careful avoidance of publication, by which your orators might have had notice of such proceedings;" but this may as well refer to the supposed insufficiency of the publication to afford notice as to the fact of notice. The averment of want of notice of the pendency of the proceedings lay at the very foundation of the appellant's case. It made no difference whether such notice was obtained through publication or otherwise, provided it was obtained. And besides the averment of the avoidance of publication is positively denied. (f. 300, 302.) The averments of the bill, in respect of notice and diligence on the part of the appellant, will be found f. 9 to 13. They may all be true, and yet the appellant have had notice in fact, and be chargeable with the grossest negligence. *Moreover, all these averments are put in issue by the answer*, and there is not a particle of evidence offered in their support. The bill avers, that the executor was bound by law to take notice of the decrees in the suit of the United States in the late circuit court, establishing the debt of appellant. (f. 9.) The answer denies there were any such decrees. (f. 299; also f. 290.) The record of the suit is not produced.

The bill avers notice in fact of the proceedings in said cause, and also in the suit in Alexandria. (f. 10.)

The answer distinctly puts in issue these averments. (f. 299.) There is no evidence.

The bill avers: "And they charge that said suit was instituted by the complainants therein with a full knowledge on the part of some, at least, of the just claims of your orators, and hurried through to a conclusion, with a careful avoidance of publication, by which your orators might have had notice of such proceedings, and have saved a part of their debt, with the express design to effect a distribution of said estate in such manner as to defeat your orators' just claims against said estate; that said executor failed to bring to the notice of your honorable court the record evidence of said claim; but, on the contrary, pretended that there were defenses against the same, which pretense was utterly groundless, and thus aided the efforts of the complainants to accomplish their object aforesaid." (f. 11.) The answer avers (f. 299, 300): "Respondent further denies that said suit in this court was instituted with knowledge, on the part of this respondent, of the just claims of the complainant, and the same was hurried through to a conclusion, with a careful avoidance of publication, and with a design to effect a distribution so as to defeat said claims; and that said executor withheld any information which he possessed, record or otherwise, in relation to said claims, and that he pretended there were defenses against said claims which he did not believe to exist, and that he failed to present to the auditor fairly and fully all he knew in relation to said pretended claims;" and then proceeds fully to explain why the administration suit was instituted. (f. 300, 301, 302.) The bill again avers the employment of counsel to investigate the claim of appellant, and that the executor was advised thereof before the administration suit; that said counsel visited the city of Washington in the summer of 1865, and that when he came again he found that the suit had been concluded. (f. 10, 11.) Even these averments, if indeed they do not sustain rather than repel the charge of negligence, are not admitted by the answer, and the rule is elementary that, in an equity proceeding, if the answer neither admit nor deny allegations of the bill, they must be proved.

Young *v.* Grundy, 6 Cranch, 51.

In short, this case was, substantially, an application to the court below to decree the refunding of money because of the mere fact that the appellant was a creditor, and in the absence of averments and evidence showing that, notwithstanding the presumption in favor of the decree in the administration suit, the appellant was equitably entitled to follow the fund.

2. The provisions of the testamentary law of this District, it is submitted, exclude the right to follow. They require all creditors to exhibit their claims within one year from the issuing of letters; they may otherwise be ex-

cluded from all benefit of the estate. (Act of 1798, ch. 101, sub. ch. 8, §§ 13, 14, 15.) Where claims are not exhibited, but known to the executor, *and he can satisfy the court that they are just*, he may retain, (*Id.*, § 10,) and if the claim be held by a party out of the District, the court may order such sum as it may think proper to be retained *for three years from the death of the testator;* but said sum shall cease to be retained unless the claim be exhibited and suit brought within that time. (*Id.*) If the claim be a disputed claim, then nine months are allowed after dispute or rejection within which to bring suit against the executor, and if the claimant shall not within nine months after such dispute or rejection commence a suit for recovery, the said creditor or claimant shall be forever barred, and the executor may plead this act in bar, &c. (*Id.*, § 18.)

In the present case the claim was not exhibited and was known to be disputed. The answer avers (f. 302,) that the notice to creditors to present their claims required by section 13 was given, and the bill does not pretend that the appellant in any respect complied with the provisions of the testamentary law, nor any excuse for non-compliance. The legatees are substituted to all the defenses which the executor might make if the fund had not been distributed. They are bound, if bound at all, to the same extent as the executor—the trustee under whom they took—and not further. As against them, the appellant cannot be in any better plight than if the excutor had retained the fund.

Now, suppose that at the date of the filing of this bill the appellant had sued the executor, he still holding the fund. It could not recover without proof of the exhibition of the claim and of demand of payment, and the claim being a disputed one, the failure to sue for nine months would be an absolute bar to recovery. (Peterson *v.* Elliott, 9 Md., 52.)

The bill does not present such a condition of facts as would have enabled the appellant to recover against the executor. It does not pretend that at any time the claim had been exhibited and demand of payment made, nor that it was not known to be disputed, nor any circumstances to avoid the nine month's bar. It does not attempt to explain the laches down to July 24, 1867. The whole scheme of the bill is that the legatees are bound, not through or under the executor and as representing his trust, but that a creditor actually obtains an advantage from allowing the distribution to be made, and then suing the distributees, inasmuch as he may recover from them under circumstances which would not have enabled him to recover against the executor. On the contrary, it is submitted that the provisions and policy of the testamentary law of this District and the States generally require creditors to assert their claims by exhibiting the same, and if disputed establishing them by suit, within a limited time; and that upon failure to do so, and the distribution of the estate, the creditors can follow the fund, if at all, only under such circumstances as would enable them to recover against the executor if he still held the assets, and that in a suit against the distributees these circumstances must be averred and proved.

III.

The bill is defective for want of parties.

1. The surviving partners of Selden, Withers & Co., should have been made defendants.

The appellant is suing the estate of a deceased partner for the recovery of a partnership debt. In such a case the surviving partners are necessary parties.

The objection was taken by the answer, (f. 288.)

In a suit for the recovery of a partnership debt against the executor of a deceased partner, the surviving partner is a necessary party.

1 Daniel Pl. and Pr., (4th Am. ed.,) 269.

If one of the partners should die, and a remedy should be sought in equity against his personal representative for the joint debt, the surviving partners should also be made parties, for they have an interest to contest the debt, and a right to be heard in taking the account.

Story's Eq. Pl., § 167; 2 cases cited.

Here the suit is brought to enforce a decree which is on its face joint. (See the decree, f. 219.)

The rule is firmly established, that in a suit against the estate of a deceased obligor, the survivor must be joined.

Story's Eq. Pl., § 169, and cases cited.

The estate is entitled to contribution, and to have the survivors estopped by the account taken, and is moreover entitled to have the assistance of the survivors in taking the account. The survivor may have paid the debt.

So, even where the obligation is joint and several, all the obligors must be joined to avoid circuity of action, and for assistance in taking the account.

"The same rule is applied where one of the obligors is dead, for in such a case his personal representative, as well as the survivors, must be made parties to a suit in equity brought for payment of the debt, whether it be for payment by the survivors alone, or out of the assets of the deceased."

In *Nelson* v. *Hill*, (5 How., 127, 133,) this court says:

"The omission to convene surviving partners would have exhibited a palpable and material defect in the proceedings of the complainants."

And to the same effect see Story on Partnership, § 363, and 3 Kent, 63.

It is asserted in the brief of the solicitor for the appellant, that the cases do not sustain the doctrine of Judge Story, that a surviving partner is a necessary party, but only that he may be joined. This is a mistake. The following cases are in point:

Hills *v.* McRae, 9 Hare, 297.
Thorpe *v.* Jackson, 2 You. & Coll. Eq. Cases, 553.
Pierson *v.* Robinson, 3 Swans., 139, n.
Brown *v.* Weatherby, 12 Simons, 6.
Vose *v.* Philbrook, 3 Story, 346.
New England &c. Bank *v.* Newport Steam Factory, 6 R. Island, 154.

Until the case of *Devaynes* v. *Noble*, (1 Mer., 529; 2 Russ. & Myl., 495,) joint creditors were held to have no claim against the estate of a deceased partner, except where the surviving partners were insolvent. That case held that joint creditors might in equity proceed at once against the estate of the deceased partner as upon a joint and several contract, leaving the representative to resort for contribution to the survivors.

Devaynes v. *Noble* was followed by *Wilkinson* v. *Henderson*, (1 Myl. & K., 532,) *Thorpe* v. *Jackson*, (2 You & Coll., 553,) and other cases, and its doctrine fully established; and this court, in Nelson *v.* Hill, (5 How., 133,) declared that the rule allowing a creditor to proceed in equity against the representative of a deceased partner, instead of suing the survivor at law, was too well settled to be shaken.

In all the cases, however, it is made a condition of the right of the creditor to proceed in equity against the estate of the deceased partnership, that the survivors be made parties. And the reason is obvious. The estate is entitled to contribution, and to have the account taken in such manner as will bind the survivors. It is moreover substituted to all the rights of the creditor against the survivors. Of course, no decree can be rendered in favor of the creditor against the survivors, but it is none the less important that an estate, compelled to satisfy the creditor, should in the same suit be protected as against the survivors, and this can only be done by making them parties. If the survivors are not made parties, the estate when asserting its remedy over against the survivors is compelled to relitigate the very matters litigated in the suit against it.

The old doctrine, requiring the remedy at law against the survivors to be exhausted before proceeding in equity against estate of deceased partner, is still adhered to in New York, (Lawrence *v.* Trustees, &c., 2 Denio, 577; Slatter *v.* Carroll, 2 Sandf. Ch., 573; and Bloodgood *v.* Bruen, 4 Seld., 362;) in Connecticut, (Alsop *v.* Mather, 8 Conn., 584,) and perhaps other States.

When the survivors are insolvent, and so averred, the better opinion would seem to be that they ought to be made parties, though it is not clearly settled. (Story Eq. Pl., §. 178, n. (4,) and cases cited.) In *Butts* v. *Genung*, (5 Paige, 256,) the chancellor declined to decide the point, but held that they *might* be made parties.

And it is with reference solely to the case of insolvent survivors that Judge Story (Eq. Pl., §. 178) lays down the rule that they *may* be made parties. He says, "so, in cases of partnership, if the survivors become insolvent, a creditor *may* maintain a bill against the personal representative of a deceased partner, and join the survivors as parties to the bill." The bill here does not aver the insolvency of the survivors.

The legatees have all the rights of the representative of the estate of Withers.

2. The trustees under the partnership assignment, and also the trustees under the deed of trust given to John Withers, were necessary parties.

Here is a decree, passed in 1860, adjudging a debt, as alleged, and at the same time applying certain securities to the satisfaction of that debt. (See the decree, f. 219, 220, 113, 114.) No account can be taken of the debt unless the trustees holding the securities are convened. The legatees are entitled to be substituted to the rights of the appellant.

IV.

The case does not show an insufficiency of assets. This is the very foundation of the right to follow. The bill avers insufficiency, (f. 15,) but that fact is not admitted and there is no evidence. The condition of the estate nowhere appears. The distribution proceedings are not put in evidence.

V.

That the Virginia decree, the foundation of the suit, so far as it is a decree *in personam*, is a nullity.

This decree is two-fold in character. It subjects to sale real estate within the jurisdiction of the State, and so far may be regarded as *in rem.* It further adjudges, according to the argument in behalf of the appellant, a debt to be due by the five parties who composed the firm of Selden, Withers & Co.

The facts are undisputed. There were five partners. Two, including John Withers, were served with process. (f. 107, 109.) The rest were not served, but published against. (f. 108.) A joint decree was rendered against all, and that decree is sought to be enforced here. That the decree is in terms joint must be conceded. Further, the bill upon which it was rendered alleges a joint obligation.

Is a joint judgment or decree *in personam* against five defendants, two of whom were served with process, and the rest not served, but published against, capable of enforcement as a conclusive judgment or decree? This is the question.

Now, all concur that, as against parties not served, such a judgment is void, and not within the protection intended to be afforded by the Constitution.

D'Arcy *v.* Ketchum, 11 How., 165.
Mason *v.* Eldred, 6 Wall., 231.

In Webster *v.* Reid, (11 How., 437,) a law of Iowa had authorized constructive notice by publication, and under this law judgments were recorded against parties not served with process, and lands were sold on execution. The court held the judgments were nullities, and that the want of jurisdiction could be shown, even when the records were collaterally introduced. (p. 460.)

So also as to publication, (Miller, Executor *v.* Miller, 1 Bailey, 242; Bates *v.* Delavan, 5 Paige, 305; Bichall *v.* Field, 8 Paige, 444; Story on Conflict of Laws, § 546, &c.)

The decree is, then, a mere nullity as against the defendants not served with process.

Has it any validity as against John Withers, who was served?

It will be borne in mind that the decree is on its face a joint decree. The right to sever in suing upon it will be discussed hereafter.

In Hall *v.* Williams, (6 Pick., 232,) a judgment rendered in Georgia against two defendants was sued on in Massachusetts. The record showed that one of the defendants had been served with process, but the other not. The suit on the judgment was brought against *the party who had been served with process.* The court held that the suit could not be maintained, upon the ground that the judgment was entire, and, being a nullity in respect to one defendant, it was also a nullity as to the other. (See p. 246.) This case was decided in 1828.

In 1865 the same point was again brought before the supreme court of Massachusetts, in Knapp and Others v. Abell, (10 Allen, 485.)

This was a suit on a New York judgment, rendered against Stone and Abell. The record showed that Abell alone had been served with process, (p. 486;) but the judgment was against both, and in the very words of the decree in this case. In the suit in Massachusetts to enforce this judgment, no service was had on Stone, but Abell was served and defended. (p. 485.)

The court held, (p. 490,) that the judgment, being entire and unqualified against both defendants and void as to one for the want of service, was likewise void as to the other, and reaffirmed the doctrine of Hall v. Williams.

Now, it is observable, that the New York judgment was under the joint-debtors' law of that State, and it was contended that the judgment might be treated as binding on the defendant served, though not upon the other; but the court held that in the absence of proof as to the New York law, it could not be presumed to differ from the common law or that of Massachusetts; and as neither of these authorized a judgment against a party not served, the judgment rendered in New York must be held void.

Holbrook v. Murray, (5 Wend., 161,) was debt on a judgment recovered in Massachusetts against several defendants.

When sued in New York, one of these defendants pleaded that no process had been served on him in the Massachusetts suit. And all the defendants jointly pleaded a plea, which was held not to deny service of process. To these pleas there was a demurrer. The point was thus distinctly presented, how far the want of service shown by the separate plea, enured to the benefit of the other defendants who had not denied service. The court say: "The facts stated in this plea being admitted by the demurrer, the defense of a want of jurisdiction as to the person of this defendant is established. As to him, the judgment is not conclusive; it is not even evidence of a demand; it is a *nullity*. What effect has this on the other defendants, whose plea does not afford any defense? The judgment is entire, and if void as to one defendant, where there are several, it is void as to all. This precise point was decided in Hall v. Williams, (6 Pick., 247,) and in Richard v. Walton, (12 John., 434.")

The same point was ruled in Rangeley v. Webster, *et al.* (11 N. H., 299.) Here a judgment had been recovered in Maine against two defendants, and had been partly satisfied. One of the defendants had not been served with process in that State. The judgment was entire. The plaintiff sued in New Hampshire upon the original cause of action, and the *defendants* relied upon the judgment. The defense was overruled, because the judgment was a mere nullity beyond the limits of Maine. The court after reviewing Hall v. Williams, Holbrook v. Murray, and Richard v. Walton, say, (p. 307:) "We hold therefore, upon the authorities cited, that the judgment in question, if an attempt were made to sustain an action upon it within this State, must be deemed invalid; *a mere nullity as to both of the defendants*. No suit therefore could be sustained here upon the judgment against either of the defendants."

"If the judgment is to be regarded as a mere nullity, where an attempt is made to enforce it by action here, the question arises, must it not be equally a nullity, when the defendants set it up as a bar or answer to an action upon the original note upon which that judgment was rendered? Can it be said, when the action is brought here upon the judgment, that the original demand does not rest in the judgment, for the reason that the judgment is void, while at the same time, if the action were brought upon the original demand, it may be legally asserted by the same party that the demand has passed into judgment, and that the action cannot be sustained for that cause? The question is clearly the same, whether the action is brought upon the judgment, and its invalidity is made the ground of defense, or the action is upon the original demand, and its validity is insisted upon as an answer to the action."

And to the same effect, see Whittier *v.* Wendell, (7 N. H., 257;) Smith *v.* Smith, (17 Ill., 482.)

It is submitted, then, to be clear beyond controversy, that upon the authorities, the Virginia decree, so far as it creates an obligation *in personam*, is null and void. And upon principle this must be so; the very essence of a joint obligation is that all are bound. The concession here is that the three published against but not served are not bound, but that as to them the decree is a nullity. How then can the decree create a joint obligation as to five, when as to three it is admitted to be a nullity? To state such a question is to answer it.

Again, the decree is an entirety. If it is to be enforced at all, it is to be enforced as made. It is not to be added to, nor is any subtraction to be made. It declares that the obligation conclusively imported by it is the obligation of five. This court is asked, whilst giving full faith and credit to the record, to say that upon the record the obligation conclusively imported is not that of five, as averred by the record, but that of two. This is not giving full faith and credit to the record, but no faith or credit at all, and indeed is amending and contradicting the record. The duty of a court, however, is not to make a new decree, but to execute that already made, if it be not void. To hold it void in part and valid in part, is to hold that as rendered it is not entitled to the protection of the Constitution, but that some other decree is so entitled.

It is not deemed necessary to discuss whether the decree be joint. Its terms are conclusive; they are the words employed for centuries in joint judgments and decrees. The presumption of law is in favor of a joint obligation. "Words of joinder are not necessary for this purpose, but, on the other hand, there should be words of *severance* in order to produce a several responsibility."

1 Parsons on Cont., 5th Ed., p. 11, ch. I.

"If two or more bind themselves in an obligation thus, *obligamus nos*, and say no more, the obligation is, and shall be taken to be joint only, and not several." (Shep. Touch., 375.)

The only attempt made in the argument of the counsel for the appellant to meet the point of the nullity of the decree, is to be found in the repeated assertion, that partnership debts are to be regarded as not only joint, but several also. Let this be conceded. How does it meet the point in controversy? The argument would only show that, assuming the decree to be a *valid decree*, the complainant has his remedy against either the survivor or the estate of the deceased partner, Withers. But the question still remains, is the decree valid? Does it constitute *the partnership debt*, *merging* and *extinguishing the original cause of action?* It cannot surely be contended that because a valid decree against parties enables the complainant to pursue all the defendants, or either of them, that therefore *a void decree is turned into a valid one.*

It is thus apparent that the opposing argument simply assumes the very point in dispute, that is, the validity of the decree.

It is argued that the remedy upon the decree is against all and each, as upon a bond or other obligation. But suppose the bond or other obligation was *void.* There would then, it is plain, be no remedy against anybody. So here, before the question as to the remedy upon the decree is reached, a preliminary question has to be solved, that is, whether there is any valid decree at all.

The modern doctrine that a partnership debt is joint and several cannot change the plain language of the decree. Assuming the complainant might, in the Virginia suit, have sued separately any one of the defendants under that doctrine, (for which assumption there is no warrant,) still the complainant had a perfect right to sue all the defendants, and *elected so to sue.* The meaning of a joint and several contract is, that the creditor may, at his election, sue all or *any one* of the obligors. He cannot, however, sue any *intermediate member.* He cannot make the contract joint as to some and several as to others. In other words, the two parties served with process in the Virginia suit, and as against whom it is contended that the decree is valid, were not even liable to suit, apart from the other partners.

The decree being a nullity, the court below properly dismissed the bill.

An analysis of the bill will show that the decree is the foundation of the present suit. The decree is in terms averred to be the debt sued for. After the averment that the transcript filed is a true copy, the bill proceeds to aver that the "said debt remains wholly unsatisfied," &c. The averments preceding those relating to the decree are manifestly averments or more matter of inducement. The original cause of action—the written contract—is not even filed with the bill. It has no place in the case, except as part of the Virginia transcript. (f. 36, &c.)

VI.

Even if it be assumed that the original cause of action is properly averred as a ground of recovery, the bill was properly dismissed.

The debt averred is not admitted but put in issue, and there is no evidence. Again, the statute of limitations was pleaded. The cause of action is not under seal. (f. 36–42.) In such a case the bar of the statute of this District is three years.

The bill shows on its face that the right of action accrued to the appellant in 1854, about thirteen years before the filing of this bill.

The answers rely upon limitations, and to these answers general replications were filed. The office of these replications was simply to take issue upon the fact of lapse of time. They did not discharge the further office of setting up any of the exceptions to the running of the statute, such as "beyond seas," &c.

The rules of equity pleading upon this subject do not admit of any doubt. Formerly a special replication was used, whereby this exception relied on was pleaded. Since special replication fell into disuse, the cause for a complainant is either to anticipate the defense and aver the exception in the bill, or when the defense of limitations is made to ask leave to amend the bill, so as to aver the exception and thereby put it in issue. In fact, instead of special replications, amendments have been substituted. (Story Eq. Pl., § 878.) Here, however, the appellant neither in the bill averred itself to be within any exception, nor obtained leave to amend the bill, but took issue upon the lapse of time set up in the answers. The 45th Rule of Equity Practice was designed to meet just such a case as the present. It provides:

> "No special replication to any answer shall be filed. But, if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct."

The defense of limitations may be taken by demurrer, plea, or answer.

Story on Pleading, § 751.

It is contended in the brief of the appellant that the bill avers the exception of "beyond seas."

The bill alleges that the complainant, when the bill was filed, was "a body politic and corporate under the laws of the State of Virginia."

This is plainly insufficient to entitle the appellant to the benefit of the exception.

A replication must state absence when the cause of action accrued, that the disability continued, and that the suit was commenced within three years after return.

Angell on Lim., §§ 196, 292.

This is not done. The only averment is, that when suit was brought the appellant was a resident of Virginia.

It is objected that, because the appellant is a Virginia corporation, it could not "return" for the purpose of bringing suit.

It is answered:

1. Whilst the artificial entity cannot migrate, yet its existence within other jurisdictions, for many purposes, and especially for bringing suits, is universally recognized.

Bank of Augusta *v.* Earle, 13 Pet., 519, 589.
Runyon *v.* Lessee of Coster, 14 Pet., 123, 129.
Lafayette Ins. Co. *v.* French, 18 How., 404, 407.
Marshall *v.* Balt. and Ohio R. R., 16 How., 314.

2, The objection proves too much. It would deprive foreign corporations of the benefit of the exception. The statute manifestly only intended to save the rights of those who might return. Either a foreign corporation can have a constructive presence for the purpose of suit, or, if it cannot, it is not within the exception. On this ground the *Bank of the United States* v. *Mackenzie*, (2 Brock., 393,) was decided, holding that a corporation could have a constructive presence within the statute of limitations.

The subject will be found fully discussed in Faulkner *v.* The Delaware and Raritan Canal Co., (1 Denio, 441,) and Olcott *v.* The Tioga R. R. Co., (6 Smith, 20 N. Y., 210.)

3. The powers and capacities of the appellant, and its relations to its own State and to this District, are not shown.

The question is one of pleading, not of evidence. If, in fact, the appellant could not leave Virginia, that fact would go to sustain a replication properly pleaded, but yet the replication would have to be pleaded.

The contract was made here and the appellant was here in 1856. See bill, (f. 5.) Also answer, (f. 308.)

It is urged that this court in *Marshall* v. *Baltimore an*

Ohio R. R. Co., held that an averment that a party is a body corporate under the laws of a State is a sufficient averment of citizenship to give jurisdiction. That is true; but when was it ever held that such an averment amounted to an averment of "beyond seas" under the statute of limitations?

Even if the exception of "beyond seas" was properly averred, it is substantially denied, (f. 398,) and there is no evidence.

It is urged that the averment is admitted by answering to the merits. The extent of such an admission is only as to *capacity to sue*, and in the present case that capacity does not at all depend on where the appellant has its *habitat.*

VII.

The Virginia decree affords no foundation for the present suit.

It is on its face interlocutory only, and has been held to be such by the court of appeals of the State. (See order filed.) It was when suit was brought, and is ~~not~~ now subject to the control of the court by which it was rendered. (Tournequet *v.* Perkins, 16 How., 82.) It may be at any time reviewed, reversed, or modified. Such a decree does not conclude as a final decree.

Baugh *v.* Baugh, 4 Bibb, 556.
Sibbold *v.* The United States, 12 Pet., 488.
Washington Bridge Co. *v.* Stewart, 3 How., 413.
2 Phillips on Ev., Cowen and Hill's Notes, note 278, 4th Am. ed., p. 62.
1 Robinson Pr. 203

An interlocutory decree being always, pending the proceeding, subject to the control of the court, to render a final decree upon it would be to give it greater efficacy than it had ~~when~~ where rendered.

Again, the decree is an entirety and to be enforced, if at all, as such. It is not denied that a decree merely for the payment of money stands on the same footing as a judgment at law, (Pennington *v.* Gibson, 16 How., 65;) but it is respectfully urged that the portion of this decree for the payment of money cannot be extracted from other portions and separately enforced here, irrespective of the other portions, and without any reason or explanation for such course of proceeding. Such an enforcement would give faith and credit only to part of the decree.

Here is a decree provisionally fixing an indebtedness, and providing for its payment by the sale of certain collaterals and the~~ir~~ application to the debt of social assets in the hands of English and Bayne, and by the sale of the private property of John Withers conveyed in trust. See the decree (f. 220, 221, and 222.) See also f. 114 for order to sell collaterals; and whilst the proceedings are *in fieri*, this bill is filed, without a word of explanation as to the securities appropriated to the debt, at the instance of the appellant.

Non constat that the appellant has not been paid.

VIII.

The decree was "without prejudice." Such a decree cannot be pleaded in bar to another suit. It merely affirms that the complainant cannot recover in the case as made.

2 Daniel Pl. and Pr., 994, 995.
Cooper on Pl., 270.
Mitford, 238.

IX.

In the absence of averment and evidence to the contrary, the common law, and as part of it, the principles of equity jurisprudence, are presumed to obtain in Virginia.

If any incident ~~in~~ or effect is sought to be attached to the Virginia decree, different from what would exist if the decree had been rendered here, it was incumbent upon the appellant to aver and prove it.

W. D. Davidge,
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